BRITAIN'S BLOT

RECIDIVISM

HABITUAL CRIMINALITY AND HABITUAL PETTY DELINQUENCY

A PROBLEM IN SOCIOLOGY, PSYCHO-PATHOLOGY AND CRIMINOLOGY

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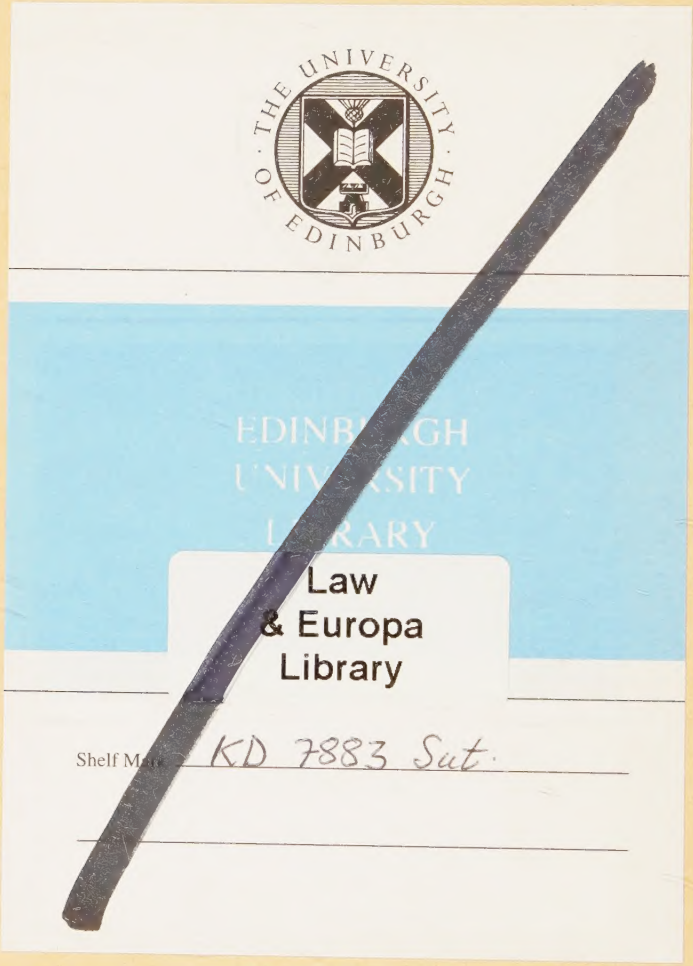
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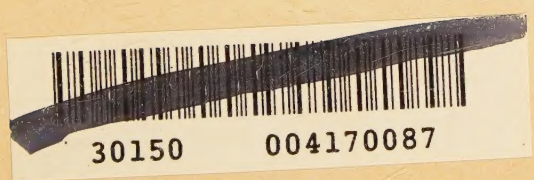
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RECIDIVISM:

HABITUAL CRIMINALITY, AND HABITUAL PETTY DELINQUENCY

A PROBLEM IN SOCIOLOGY, PSYCHO-PATHOLOGY AND CRIMINOLOGY

BY

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TO THE

RIGHT HONOURABLE R. B. HALDANE, M.P.

LORD RECTOR OF THE UNIVERSITY OF EDINBURGH

MEMBER OF THE PRIVY COUNCIL,

AND

SECRETARY OF STATE FOR WAR

WHO HAS INSTITUTED FOR THE WELFARE OF HIS COUNTRY

A TRIPLE LINE OF SPECULATIVE, EDUCATIONAL,

AND MILITARY DEFENCE

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PREFACE

THIS monograph is the outcome of four articles contributed to the *Journal of Mental Science*, 1907–8, of a *Rapport* on Recidivism presented in 1906, at the request of the Lisbon Executive, to the Psychiatric and Criminological Section of the Fifteenth International Medical Congress, Lisbon, and of the *Précis* of evidence tendered, in June, 1906, to the Royal Commission on the Care and Control of the Feeble-minded.

The time seems opportune for its appearance. Perhaps at no time within living memory has there been such activity and anxiety as is at present manifested by Ministers of State concerned with Home Affairs, by the executives responsible to them, by judges and magistrates, by social reformers, by the Salvation Army, by Churches, by philanthropic agencies, by publicists, and by the Press, to check recidivism, both at its source and in its onward course, and to deal rationally with the main causes producing and perpetuating it. Public interest, as well as alarm, has been quickened by such tragedies as Glasgow—the storm centre of Scotland's criminality—witnessed within recent weeks in which the worst and most dangerous phases of the "professional" criminal came to light. In England as a rule the ruffianly element has been much more in evidence among the "professionals."

It has to be confessed that recidivism, which hitherto has all but eluded the grasp of statesmen, jurists, penologists, and sociologists, is now seriously engaging the attention of all of them, with the prospect of good results.

This monograph represents the gathered-up threads of a somewhat long (twenty-eight years), varied, and intimate experience in the fields of lunacy, inebriety, and delinquency, an

experience which has left no doubt in the author's mind that there are two distinct types of recidivist—the habitual petty delinquent and the habitual criminal, between whom, it must be said, there is little or no intermingling, and little or nothing in common save their haunts. The physical and mental capacity of the two are quite different. The former, by far the most numerous, although costly to countries and communities, is, in proportion to numbers, not nearly so costly as the latter, who is a dangerous element in society, requiring either special treatment, or repression and detention when rational attempts at reformation fail.

In each of the two classes there are two well-defined types, the line of demarcation in both being the psycho-pathological one either of the genetous or acquired order. In the first class —the petty delinquent—there is a large number of pathological specimens (obsessed and weak-minded inebriates, vagrants, prostitutes, and petty thieves); in the second class—the habitual criminal (housebreakers, burglars, thieves, resetters, and the alcoholic authors of crimes of violence and cruelty)—the number is small, and the larger portion is to be found in the last group identified with acute and chronic alcoholism.

The result of a somewhat wide and intimate knowledge of the problem has led the writer to the conclusion that there is no established connection between drink and "professional" criminality, and that if there be any link it is but slender and remote.

Society, in the matter of crime and delinquency, does not present a stainless surface—rather it is mottled; and on this mottled surface there is unmistakably stamped that dark blot of recidivism which reformers of all kinds are seeking to remove by newer and more rational conceptions of crime and delinquency, and by newer and more rational methods of prophylaxis and treatment.

J. F. S.

EDINBURGH;
June, 1908.

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RECIDIVISM:

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A PROBLEM IN SOCIOLOGY, PSYCHO-PATHOLOGY, AND CRIMINOLOGY.

By J. F. SUTHERLAND, M.D., F.R.S.E.,
Deputy Commissioner in Lunacy for Scotland.

Introduction.

RECIDIVISM is the French coined term which appropriately expresses the persistent, reiterated lapses of the same individual, in that small section of habituals found in every country, both among criminals engaged in serious crimes against the person and property, and among petty offenders, whose delinquencies or misdemeanours are drunkenness, public disorder, prostitution, and vagrancy. The former, the vast majority of whom are males, are aggressive, noxious, anti-social, and, to a slight extent, industrious and productive; the latter, a vast majority of whom are females, are passive, idle, debauched, parasitic, and unproductive. The two types are quite distinct, and there is little or no intermingling; that is to say, the recidivist engaging in the major crimes in the criminal calendar does not, as a rule, forsake the ranks of that class to become a recruit in the ranks of the minor and petty offender class, and *vice-versâ*. This fact should not be lost sight of.

It is unfortunate that so eminent and widely read an alienist as Professor E. Mendel, of Berlin,[1] should now apply the term "recidivism" to recurring insanities, seeing it had come from long and general usage to apply to criminals and offenders, and in this sense is accepted and understood by every civilised country.

[1] Mendel, Berlin, *Lietbaden der Psychiatrie*, 1907.

Whatever the causes of its existence and vitality, within or without the individual, recidivists of both types live, move, and have their being, in spite of, and in antagonism to the laws made by society, for the protection of the person and property of the individual, and of the commonwealth as a whole.

The laws of progressive countries are, fortunately, not like those of the Medes and Persians—unchangeable—and therefore liable to be broken suddenly. And thus it comes about that persons who, in one age and generation, were denounced, subjected to every humiliation, and confined as felons, in another were hailed as heroes, martyrs, and altruists, and that those who to-day, in exalted stations under the ægis of the law, are carrying on, in the name of *haute finance*, etc., with the aid of wealth, gigantic frauds against the weak and trusting members of society, may to-morrow find themselves carrying on their schemes under laws calculated to check this refined and subtle development of that human, or rather, inhuman acquisitiveness and avarice, which, like a demon, spreads its dusky wings over mankind, and enveloped in the legal mesh, just as surely as the vulgar thief is now.

Recidivism cannot but have for psychologists and alienists a special interest. The propositions put forward by the Italian school of Criminal Anthropology, with Lombroso at its head, quickened that interest for some years, as well as criticism, often unmeasured, until that inevitable reaction set in, which, as a rule, happens when extreme claims, based on slender data, are put forward, and cannot, upon further investigation, be maintained. What applied to, and might be true of, a few, was claimed as covering the many. Absolute certainty in methods of observation and of results was claimed, when these in the most favourable light, could only be considered of relative and uncertain value.

For some reason or other the problem of recidivism has all but eluded the grasp of legislators, jurists, sociologists, penologists, and psychologists, only indifferent success, up till now, attending their separate and combined efforts, and what little success could be shown followed experiment after experiment, made in a haphazard way, without any real guiding principle. The beneficial changes, slowly and constantly evolving in wisely-governed communities, which have arrested the growth of recidivism, or prevented that growth beyond the growth

which could only be justified by the increment of population—the latter not much to boast of—have taken place by an adjustment of the laws referable to land and property more in harmony with the views of the many. The government of the people by the people, and not by the few, has brought about a better state of society, better laws, better conditions of living and labour, a fairer distribution of the wealth accruing from labour, the extension of liberty, the spread of education, and equal opportunities for all to rise in the social scale, and, last of all, a better understanding of penological principles. Under favourable conditions, such as these, it will be possible to discover the large number of reformable recidivists at present in a rebellious mood. A residuum will always remain requiring to be suitably dealt with, and treated either as incorrigibles or as pathological entities of various types and degrees.

It is coming to be recognised in Great Britain, the United States, and on the Continent—and this is the view of the writer—that in the study of habitual criminals and habitual petty delinquents much may be done for them, and through them, for society, on the following lines : *first* in importance, by a study of the post-natal environment in its numerous and far-reaching aspects from childhood to adolescence ; *second*, by a study of heredity, including ante-natal environment, which might reveal degeneracy, mental and physical defects of such a nature as to make the proper exercise of the will in conduct and duty a very doubtful one ; and *third*, by means of criminal anthropometry, in order to view him in contrast with the entire population, and with the classes from which the different types of recidivists chiefly come.

The central and local administrative authorities throughout the country have, at different times and in various directions, at great cost, attempted to combat and solve this problem, hitherto baffling and insoluble, by experiments of a juridical, penological, and social nature, but the criminal, irrepressible Frankenstein rearing its hydra-head and stalking through the land with limbs of brass, as well as the weak-minded and obsessed petty delinquent recidivist with feet of clay, remain with us. But the psycho-pathological and environmental lines of inquiry, especially the former, have yet to be tried in earnest by competent investigators.

It is becoming abundantly clear that the line of investigation

in the future which promises to all nations good results is that which recognises the two principal causes of criminality and delinquency, the sociological one *external* to the recidivist—namely, environment, and the economic conditions bringing it about and perpetuating it, the other *internal* and hereditary—to be estimated by the psycho-pathological method. With some knowledge of recidivists gained in a wide field of observation, and likewise of the penal system of this and other countries which prevailed for a time and passed away, this is the confident belief of the writer. Racial differences are not of much moment, except in regard to the drink habit so prevalent among the Celtic, Teutonic, and Slavonic peoples in Northern France, the United States, Northern Germany, Russia, Denmark, Sweden, Belgium, the Netherlands, and Great Britain and Ireland, and the habit of carrying lethal weapons practised by the Celtiberian peoples of Spain, Portugal, the Balkan States, Italy, and along the littoral of the Mediterranean.

CHAPTER I.

Crimes and Offences.

No attempt is made in this monograph to define a "crime," or an "offence," or what is meant respectively by a "criminal," or a "petty offender," or "delinquent." For all practical purposes a "criminal" would mean in England and Wales a person guilty of one of the eighty-three "indictable" offences tabulated in English, and in Scotland one of the fifty-four "crimes" tabulated in Scottish Judicial Statistics. Correctly speaking, and for statistical purposes, "offences" in any country should refer to minor breaches of the law referred to in English statistics as "non-indictable offences," and in Scottish as "miscellaneous offences." There may be legal difficulties in altering terms, but there can be none in asking for a better classification in blue-books, such a classification, for instance, as would in England remove "aggravated assault" and "cruelty to children" from the "non-indictable" to the "indictable" list, and on the other hand removing from the "indictable" to the "non-

indictable," "indecent exposure," "habitual drunkenness," and "suicide" (attempting to commit). Similarly in Scotland it would be both proper and advantageous to remove from the "crimes" to the "offences" list "indecent exposure," "drunkenness under Inebriates Act," and many cases of "petty thefts," and of "malicious mischief." This latter term embraces trivial as well as serious breaches of the law, and yet they all appear as "crimes." Not so in England, where a distinction is made, some properly appearing as "indictable," some as "non-indictable." The truth is, certain breaches of the criminal law should, depending on their nature, appear in both classes. It is possible so far to form some idea of what is meant by a "crime" and what by an "offence" by a regard to the Courts in which these are unfolded. Thus in England "indictable offences" (the Scottish equivalent being "crimes"), five out of every six being cases of larceny, the perpetrators of which in 63 *per cent.* were "repeaters," refer to persons prosecuted on indictment before assizes, quarter sessions, and summarily under the Summary Jurisdiction Act of 1899, while "non-indictable" to persons prosecuted in courts of summary jurisdiction, police, and justice of peace courts.

In Scotland "crimes" are unfolded in the High Court of Justiciary in Edinburgh or on circuit, in sheriff courts after full committal and summarily without full committal; "offences" in sheriff courts without full committal, in police and justice of peace courts.

Having regard to these points it should not be difficult to differentiate between "crimes" and "offences," "criminals" and "offenders," nor to set up an improved nomenclature and classification. It is as difficult for the statistician as for the psychologist to understand why crimes against chastity governed by the lust factor, and considered apart from the possibility of mental flaw, are classed with crimes of violence and cruelty with which they have no ætiological connection whatever. They constitute, it may be small, a class by themselves.

Now if these be the two accepted types of recidivism which the authorities have to contend with, it seems but proper to fix, in a general sense, without the law laying down hard and fast lines, the number of convictions which would constitute a recidivist in each.

It will be apparent to anyone with knowledge of the subject

that "professional," as well as "habitual," recidivists engaged in serious crimes against the person and property, owing to long periods of imprisonment will not have the same opportunity of gratifying their acquisitive desires as habitual petty offender recidivists, who, in consequence of brief losses of liberty—quite long enough for them, as a rule, so long as the punishment is roughly made to fit the injury done to Society—run up in a short time a big score, as much as twenty convictions in one year, and hundreds in a life-time.

There would be nothing suggestive of harshness in fixing the number of convictions to constitute a felon recidivist at two in one year or four over any period, nor four in one year and seven over any period in the case of a petty offender recidivist. So that no injustice might be done either, the court investigating these cases would, before making its pronouncement, take into its consideration the history, habits, occupation, associates, etc., of each; and in this way it would be possible to suspend a sentence of lengthened social sequestration where it was ascertained that although the specified number of convictions had been run up, yet the accused, as a rule, was engaged in honest industry, and contributed something to the prosperity of the community.

It should be kept in mind that the mental element enters largely into "crimes," specified as "attempting to commit suicide," "habitual drunkenness," "indecent exposure," many of the sexual crimes, many of the petty larcenies, and the numerous homicides and assaults associated with drunkenness; and into "offences," such as "drunkenness," "prostitution," and "vagrancy." And yet on the authority of Sir John Macdonell, in his introduction to the *Criminal Judicial Statistics for England* for 1902, "there is comparatively rarely an inquiry into the mental condition of prisoners unless in the case of grave offences such as murders."

Among the authors of the various crimes and offences specified, there are certain well-defined types met with. There are *first*, the sexual perverts; *second*, the individuals low down in the social scale, who, in the grip of one or numerous bouts of ethylic or methylic alcohol, commit deeds of violence and cruelty; *third*, thieves, embezzlers, resetters, housebreakers, etc., professional criminals who live by plunder, whose intellectual and instinctive activities are normal, and whose conduct is governed by avarice and acquisitiveness; *fourth*, the habitual

drunkard and prostitute, feeble-minded or neurosed from the start, or becoming so by long indulgence to excess; and *fifth*, the vagrants and unemployables, the "born tireds" of Pett Ridge, many of whom are below par mentally. These few classes have been divided by observers into "perverts" and "inverts," the perverts or "wont workers" being as a rule active criminals, the "inverts" or "can't workers" passive delinquents. The skilled house-breaker and burglar speaks with contempt of the inverts as "mugs." A true pervert also, although not an habitual, is the forger, the fraudulent company promoter, and dishonest financier with considerable intellectual gifts. In the main this division into "perverts" and "inverts" may, with reservations, be accepted as sound.

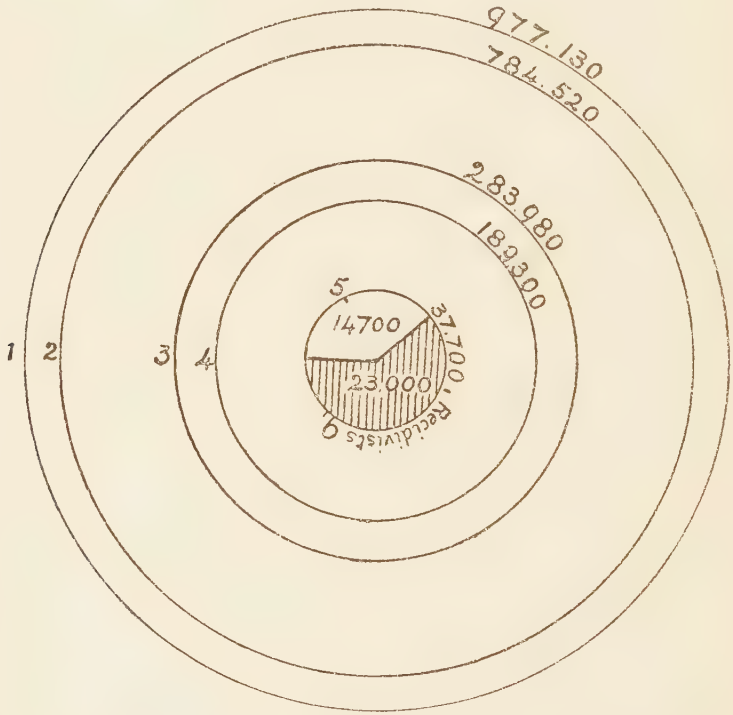
Whatever their intelligence and capacity, it will be shown later by an anthopometric survey of these that their growth is stunted and their stature much below the average. Some psychologists maintain that society is permeated with potential criminals, all that is lacking being opportunity or necessity, which would mean acceptance of the French proverb, *l'occasion fait le voleur*. There is less than the proverbial half truth in this proverb, uttered without regard to the social environment and the mental defects and disorders met with in a large number of criminals and delinquents.

Statistics of Crimes and Petty Offences and of Recidivism in Great Britain for 1903.

It is but to utter a truism to say that the face of society, as a whole, and in all its ramifications in this or in any country, is not stainless. Rather it is mottled all over by the actions of its law breakers as well as by those who transgress every article of the moral code when opportunity presents itself but skilfully avoid the meshes of statutes, and on this mottled area there stands out in bold relief the dark and discreditable blot of recidivism, perpetually hanging like a pall, which has hitherto defied lifting in spite of many and costly attempts made by the legislature. There is no single panacea for the evil; there could not well be, seeing that underlying it are the great social problems of our age, *viz.*, intemperance, the housing and land question in relation to slum and one-roomed dwellings, poverty, vice, illiteracy, lack of parental training, responsi-

bility, and degeneracy both physical and mental. The bare mention of these factors shows how complex the problem is before the mentally defective and the incorrigibles, making up the recidivist army of 37,700 of both types in Great Britain, are reached and treated on rational lines. But at the same time it can be said that the problem admits of some solution, and of results infinitely more satisfactory than those resulting from the unscientific and irrational prophylaxis and treatment

FIG. 1.



of crime and delinquency in the past. The optimism which points a better way is ultimately bound to prevail over the pessimism and the *non-possumus* attitude of the past. At present the best legislative, administrative, legal, and medical minds are turned to the problem, and remedies and suggestions put forward as to the best means of coping with this festering social sore.

Decent housing, education, a living wage, sobriety, employment in harmony with varying physical and mental capacities

leave much to be desired. Some of these factors made the dishonest and professional *habitués* who, in the beginning of last century, were the terror of the hulks and gaols of England, fairly respectable citizens of Australia, and by some said to be fairly entitled to a share in the building up of that prosperous colony, which is free from much that is regrettable in the social fabric of older countries, such as urban overcrowding, poverty, intemperance, and crimes and offences.

	Apprehensions and citations.	Convictions.	Number of imprisonments.	Number of individuals imprisoned.	Recidivists.
England .	810,950	660,300	223,910	149,300	33,000 { (*a*) 20,000 (*b*) 13,000
Scotland .	166,180	124,220	60,080	40,000	4,700 { (*a*) 3,000 (*b*) 1,700
Total .	977,130	784,520	283,990	189,300	37,000

(*a*) Criminal recidivists; (*b*) petty offender recidivists.

By comparing the statistics of (1) apprehensions and citations, (2) of convictions, (3) of the number of imprisonments, (4) of the number of individuals represented by these imprisonments, and (5) the number of recidivists engaged both in "crimes" and "petty offences" for England and Scotland, and illustrating them by concentric circles arithmetically constructed, Great Britain's criminality, delinquency, and recidivism not only may be seen at a glance, but also, what is of value, their true purport. In this way the taxpayer and reformer will be enabled to avoid taking too gloomy a view of the situation, bad as it undoubtedly is in the most favourable light from the ethical as well as from the financial standpoint.

Nearly a million apprehensions and citations by the police in one year, or one to thirty-eight of the population, is a staggering fact, whether considered ethically, statistically, or financially, and provides food for serious reflection as to whether, after all, things social, penal, legal, and administrative are for the best in a country whose prosperity and Government as a whole are both the envy and admiration of less favoured countries. Evidently there is considerable room for improvement after every possible explanation is made to minimise the magnitude

and significance of nearly a million apprehensions in one year in Great Britain. After the lengthy trials of past methods and ideas the times are surely ripe for a somewhat different and more enlightened prophylaxis and treatment, involving changes in our judicial, police, and penal systems, in the duties and obligations of society, and in a better understanding of the physical and psychical characteristics of chronic law breakers themselves, necessary to meet the case. This, no doubt, is a large order, but it has to be faced courageously and tenaciously if a better way is to be found. The beginning of the twentieth century saw things social, legal, and penal, vastly different from what they were a century, or even half a century earlier, but a further evolution of the criminal and delinquent problem on new lines is clamantly called for.

It will be observed that with convictions the approximate million of apprehensions falls to little more than three quarters of a million, or 1 to 47 of the population. With imprisonments it shrinks to little more than a quarter of a million, or 1 to 131 of the population; and these latter in turn represent only 189,300 individuals, or 1 to 200 of the population engaged in crimes and offences calling for imprisonment with or without the option of fining. And among those in confinement and at large there are approximately 37,700 recidivists, in round numbers 1 to 1,000 of the population, imbecility and insanity being, according to last census, 4·2 per 1,000.

The 37,700, having regard to the nature of the criminal and delinquent tendencies manifested, may be divided into two sections, 14,700, or 1 to 2,540 of the population, representing the genuine criminal recidivist of the professional type, and 23,000, or 1 to 1,620, the chronic drunken, disorderly, nomadic, and petty larcenous delinquents. This division is a necessity for statistical as well as reformatory purposes, although it is often ignored by authorities, who speak and write as if they were all of one type.

The figures for England have been slightly adjusted, not only to admit of comparison with Scotland, but for the valid reason that the somewhat arbitrary division of crimes and offences of the former country into indictable and non-indictable in the police returns and in official compilations leaves many crimes, such as aggravated assaults wholly, cruelty to children mostly, malicious mischief and petty thefts

partially in the category of "non-indictable" offences, whereas in Scotland they all appear under "crimes." It would be better if in both countries these were divided into two classes, those considered serious and those not so, and these it would be possible to allocate respectively to "indictable" and "non-indictable" offences in England and to "crimes" and "miscellaneous offences" in Scotland their quota of each, so long as these are the terms in use in official returns. Manifestly the present arrangement and classification is capable of improvement.

There are, it is evident, considerable differences in the statistical representations of criminal and delinquent manifestations in England and Scotland. To begin with there is 1 apprehension, etc., to 40 of the population; in Scotland 1 to 27. Scotland's share in comparison with England is 5 to 1, whereas, according to the respective populations, it should be much lower, *viz.*, 7 to 1. It is not to be supposed that the Scottish character on its erring side is 48 *per cent.* worse than the English, and to this extent loaded with original and acquired guilt. Rather it is to be attributed in part to the attitude of the police and magistracy in Scotland towards the hordes of petty offenders that come before them. In Scotland, it may be said, nearly every petty offence is dealt with by the police, often unnecessarily vigilant and hauling their captives, more especially "drunks," to police cells, when, in many cases, it is safe to say it would be possible and preferable by magisterial regulations with legislative sanction, if necessary, to remove them to their homes at their own or their relatives' expense, met at the time or afterwards, by giving time to the offender to recoup the public outlay incurred in an evil hour on his behalf or to find security. The enormous totals would melt away in an astonishing fashion if drunkenness, petty thefts, prostitution, and disorderly conduct in association with drunkenness in Great Britain were excluded. Thus simple and minor larcenies amount to 57,735, or 61 *per cent.* of all indictable offences; drunkenness, disorderly conduct, and prostitution to 403,260, or 45 *per cent.* of all non-indictable and miscellaneous offences; breaches of Vagrancy Acts 65,018, or 7·4 *per cent.*; and offences against police regulations, road and highway, labour, factory, sanitary, poor, education, game, etc., laws, 328,030, or 39 *per cent.*

This suggestion of a different method of police interference has chiefly reference to casual offenders and "pay day"

drunkards, who on occasion behave foolishly, and not to the habituals, who neither toil nor spin and yet live, and like derelicts, drift in the tide currents, especially the sunken ones of society, finding in the course of their movements the prison-house something of the nature of a sanatorium in which to spend each alternate week of their existence, which is thus prolonged by a system which Bernard Shaw speaks of as ultra-humanitarian and calculated to defeat the law of natural selection. Further, in Scotland as in England there is no such thing as private prosecutions by aggrieved parties. This procedure, peculiar to England, is to some extent, and to a much less extent than the respective attitudes of the magistracy and police to "drunks," explanatory of the more favourable position of England statistically, for many defendants in consequence escape the consequence of their misdoings, there being more frequently than not no prosecution.

For a moment let the convictions and imprisonments be examined. In England the former is 1 to 49 of the population, in Scotland 1 to 37; the latter 1 to 146, and 1 to 76 respectively, Scotland in the matter of imprisonments being thus double that of England. This excess for Scotland has already in part been explained. The rest of the explanation has to be sought for in the imposition of higher fines for drunkenness and disorderly conduct, and in the prevalence of briefer and more useless sentences in Scotland, and consequently more frequent opportunities to repeat the offence. Perhaps the national beverage of Scotland has got something to do with a difference so adverse to the smaller country.

Felony and criminal recidivism is, on the other hand, in the opinion of the writer, in proportion higher in England. This is intelligible, having regard to its numerous dense urban populations, with its inevitable slumdoms, as things are, sheltering and breeding a coarser and more daring type of felon.[1]

No matter, however, which the type of recidivism, there need be no doubt that many of the rank and file of both types are physically weak and degenerate, feeble-minded, mentally perverted and obsessed in various directions, and therefore cannot conform to society's conditions without the help of the moral "go-cart," implying the care and supervision of those more

[1] In 1906 England furnished 1,035 convicts, Scotland 72; the former's quota compared with the latter should have been 470.

happily circumstanced mentally, morally, and materially, denied under present methods. How far the will is free in regard to conduct will be discussed later.

Impressive and significant were the words of the French Minister of the Interior, who seventeen years ago visited the haunts of the recidivist both in Liverpool and Glasgow and saw for himself the degenerate race types: "Surely these things are not without a remedy in a land where blows the breeze of freedom, and where the Christian faith soars high above the coarse ties of flesh." The fulfilment of this hope, shared by everyone who knows the problem, is still awaited.

Statistics of Crimes and Petty Offences and Recidivism in Scotland for 1903.

It has been the custom of not a few who speak and write with some authority on criminal matters to decry the presentation of vast masses of figures as not only puzzling, but of little value. The puzzling nature of them to many is admitted, but not the lack of value. National, as well as international, statistics have a relative, if not an absolute, value, even when the methods of compilation and classification of crimes are neither uniform, nor the best, nor, indeed, what one would expect them to be. Before a nation attempts to grapple by newer methods—or, indeed, by any method—with the problem of crimes and minor offences in their various noxious and persistent forms—it very properly demands that a rough estimate should be made of habitual criminals and delinquents who have failed to benefit by past methods. Statistics in their true setting must mainly guide the public and the legislature which have to choose between the pessimistic views of some, and the optimistic of other authorities. If any investigation of masses of figures revealed, on analysis, only a few recidivists—whether felons of the *hostes humani generis* type, or delinquents of the drunkard, vagrant, tramp class—then it may safely be assumed that society, sociologists, and penologists would not trouble much about *une quantité négligeable*, but would be inclined to allow them to fulfil speedily their destiny in their own way, thereby giving testimony to a full belief in the doctrine of the survival of the fittest. Some would revert to Sparta's methods. But the humanitarian, the political, judicial,

and penal reformer, and the psychological observer have to be reckoned with in every civilised land, and the question which cannot thus be disposed of is not allowed to rest or slumber. Like the problem of poverty and the unemployed, while the aggregate is small, not much is heard of either, but let it grow in dimensions and obtrude itself on a nation's notice, then legislators make an effort to ascertain and to remove the causes.

Three statistical tables with graphic representations (concentric circles) of each class of crimes and minor offences (misdemeanours) in Great Britain, England, and Wales, and Scotland for 1903, are submitted.

Scotland.—The total apprehensions in Column 1, namely, 166,180, or 1 to 27 of the population, have at first sight an alarmist look, and would suggest that things—social and ethical —are not well either in Scotland or England, in which the liberty of the subject secured under many a Magna Charta is the palladium of the people. But this immense total, it should be borne in mind, only furnishes 36,710 individual prisoners. It will be observed that the totals in the five different columns steadily diminish until the noxious, aggressive, and anti-social recidivists in Class 1 number approximately 1700, or 1 to 2690 of the population, and the parasitic and passive recidivist in Class 2 (*a*), 3000, or 1 to 1500, every one of whom, unlike the worst type of recidivist who escapes justice three out of four times, are accounted for by the police.

Both kinds number 4700, or 1 to 1000 of the population. 0·38 per 1000 of the population waging an aggressive war against society does not look bad, although the annual cost of the 1700 for maintenance, police supervision, and the machinery of the law, in addition to the loss to the nation when they are at liberty, falls little short of a million sterling annually!

Among the 4700 recidivists there are, from calculations I made in 1895, 2500 who are weakminded and mentally unstable. That would mean ·5 per 1000 of population—a ratio somewhat similar to that given for England some years later by Mr. C. S. Loch, C.B.

The recidivists in Scotland, it is true, do not increase beyond the figure justified by growth of population, and that is not much to boast of; neither do they diminish. The gaps made in their ranks by the ravages of debauchery, disease, and premature death, and by the wearing down of prolonged, penal

sequestration are soon filled up, and will continue to be filled up so long as that pernicious moral environment possible in the slums of cities and towns is allowed to continue. It will be noted that all those coming under the cognisance of the police are divided into *two* classes: the authors of crimes, and the authors of petty offences (misdemeanours), the apprehensions of the former numbering 25,570, being 15 *per cent.* of all crimes and offences, and 1 to 180 of the population, of the latter 140,600, being

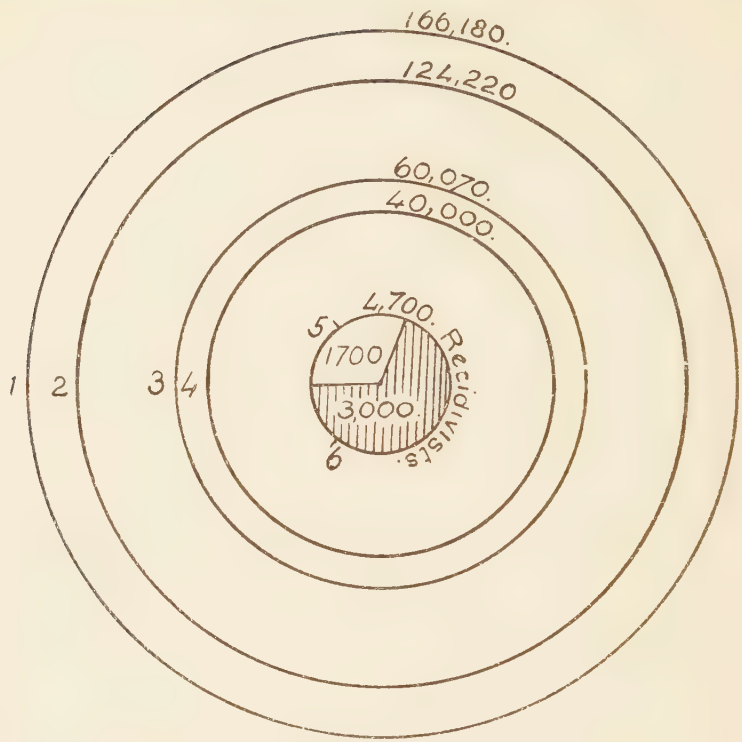
Scotland, 1903.

Population, 4,580,000. *Apprehensions and Prosecutions for Crimes*, 25,574; *for Offences*, 140,606. *Total*, 166,180.

	Sex-ratio.	Crimes known to police.	1. Apprehensions and citations.	2. Convictions.	3. Imprisonments.	4. Number of Individuals imprisoned.	5. Number of recidivists free and unconfined.
Class I.—*Crimes.*							
A. Homicides,* grave assaults, cruelty to children	11 to 1	4,590	4,762	3,975	1,976	—	—
B. Rape, unnatural sexual crimes, libidinous practices	—	362	310	197	233	—	—
C. Malicious injury to property †	14 to 1	4,221	4,627	3,645	652	—	—
D. Crimes against property *with* violence, robbery, housebreaking, burglary	16 to 1	4,736	1,568	1,282	1,219	—	—
E. Crimes against property *without* violence, theft, reset, fraud, forgery, etc.	3 to 1	21,152	13,834	10,928	6,498	—	—
F. Other crimes	2 to 1	—	473	263	542	—	—
Total of Class I	5 to 1	—	25,574	20,290	11,120	7,400	(b) 1,700
Class II.—*Petty Offences.*							
A. Breach of peace and drunkenness	3 to 1	—	95,681	70,210	36,108	—	2,000
B. Prostitution	—	—	2,886	2,714	2,006	—	—
C. Vagrancy, begging	7·5 to 1	—	4,037	3,757	2,561	—	1,000
D. Other petty offences	6 to 1	—	38,002	27,252	8,281	—	—
Total of Class II	3 to 1	—	140,606	103,933	48,956	32,600	(a) 3,000
Grand total of I and II	3·5 to 1	—	166,180	124,223	60,076	40,000	4,700

* Homicides apprehended, 62.
† Arson (fire-raising), 38; known to police, 54.

Fig. 2.



1. From circumference to centre = apprehensions and citations.
2. ,, ,, ,, = convictions.
3. ,, ,, ,, = imprisonments.
4. ,, ,, ,, = number of individuals imprisoned
5. Criminal recidivists.
6. Petty offender recidivists.

85 *per cent.*, and 1 to 39 of the population. Of the 25,570 apprehended in Class 1, 20,290 are convicted summarily and after full committal, and 10,920, representing 7400 individuals, or 1 to 620 of the population, go to gaol; and among those and their comrades at large are to be found 1700 noxious and hitherto incorrigible recidivists. In the case of larceny (thefts), reset, fraud, and forgery, the sex ratio is 3 to 1, not a few women and girls in the latter class being degenerate and weak-minded, pilfering, both when sober and partially under the influence of alcohol, when they become reckless and unconcerned. The sense of shame and remorse is a *minus* quantity. No less than 25 *per cent.* of the authors of crimes in this category escape

apprehension, "slimness" and cunning being exercised by the smart ones.

In regard to crimes of blood and violence, murder, culpable homicide, assaults on wives, cruelty to children, etc., the authors betray a coarse, callous, and cruel nature, but not, except in rare instances, calculation or deliberation in their execution. Speaking for Scotland, the mental attributes of hatred, malice, and revenge in evidence in this class of crime suggested by the foregoing sentence requires modification, for it is within the mark to say that 70 *per cent.* of such crimes are committed by persons more or less in a state of alcoholic intoxication, and therefore more or less irresponsible, or by persons degraded by chronic alcoholism.

Jurists working upon precedents and judicial dicta generations, if not centuries old, declare that intoxication, which, in the view of the writer is temporary insanity pure and simple, is no excuse for the gravest of all crimes—homicide. There can be no freedom of will in such a state. Others, again, having better conceptions of what the intoxicated state means in relation to crime and responsibility, advocate that at least he should be punished and sequestrated, if not for the resultant crime, for imbibing too freely of a toxic agent, which he knew, or ought to know, in himself, and by its action upon others, would deprive him of inhibition, and of clear judgment as to conduct. There is something, indeed, much, to be said for this view in any rational system of jurisprudence. But even here the question is begged so far as chronic drunkards are concerned, and it has yet to be determined by alienists in what cases the alcoholic habit is a vice, and in what cases an evidence of a neurasthenic or defective organisation, or the outcome of a pathological state, both of mind and body, induced by long indulgence to excess. In many of the latter class no doubt there was a stage in the life of the drinker when responsibility might be assumed, but it is by no means an easy task for the alienist or physician to fix the stage when responsibility ceased and irresponsibility began. For some murders committed in passion or frenzy to avenge a wrong—real or imaginary—it is possible to plead justification and extenuation; but for the foul, cold-blooded, deliberate homicides of notorious criminals and prisoners, who, for lust or gain, have put out of existence wives, helpless children, and others,

no shadow of an excuse can be offered, in view of the fact that without resorting to such extremes the former passion could be gratified to the full sexual pitch, and the latter realised with the risk of loss of liberty to himself rather than the loss of life to another. And the term "instinctive criminal" should not be set up as a shield to protect such inhuman monsters from the justice, not the *lex talionis*, of laws, both divine and human. For such elimination or perpetual sequestration is called for in the interests of society. Such criminals—moral monsters if you like—are not one in a million, and fortunately, being so rare, it is indefensible to erect them into a class and write as if they were in evidence on all sides, and a standing menace to life and property.

The number of recidivists in this class of law-breakers is few. It could not be otherwise, seeing their acts of violence are often the outcome of passion, hatred, and malice gratified with, or without, the aid of an intoxicant, and in their graver forms are seldom repeated, punition having a salutary effect.

With regard to the perpetrators of crimes against chastity, *viz.*, rape, incest, unnatural crimes, etc., it has to be said that in no class of crime is the psycho-pathological element so apparent. Krafft-Ebing has for all time shown how many of these abnormal acts are due to sexual perversion and obsession. The abnormality and unnaturalness of them all is self-evident to every unprejudiced physiological being. The numbers known to the police in the nature of things are few, and nearly all committed by males. But, for obvious reasons, all such crimes do not come to light, and females take part in them, it is true, to a less extent, the sexual function being a less impelling one in them. Not only do these crimes, one and all, suggest to the normal individual a psycho-pathological and pathological side, but the repetition of them in spite of severe punishment confirms this view. The recidivists of this type known to the police are few—fewer than they really are.

Of crimes entitled "Malicious Injury to Property," arson is the most serious, and always suggests obsession when deliberately done without fraudulent intent; sometimes when done vindictively. Malice is at the root of it, and the male sex are mainly engaged in it. Recidivism is rare.

Coming to Class II—"Petty Offences" (misdemeanours)—no less than 140,600 apprehensions, being 85 *per cent.* of all crimes and offences, were made by an unnecessarily vigilant

police, who seem to pounce automatically upon any staggering object on city streets.

The zeal and activity hitherto displayed by the guardians of public order is in this matter being somewhat curbed by the timely action of the Secretary of State. The ratio of such apprehensions is 1 to 33 of the population. Of this enormous total drunkenness and breach of the peace (95,680), prostitution (2,886), account for 98,567, or to 1 to 46 of the population.[1] The great majority of the authors of these offences are in no sense criminal or recidivist, being males who get drunk on pay and *fête* days, work hard during the week, and maintain a home.

The phase of prostitution, which has for its votaries the *demi-monde*, is synonymous with drunkenness, dress, and indolence, these having, perhaps, as much, or more, to do with it than lust. The ranks of prostitution are not recruited, except to a very small extent, by the progeny; rather from those who up to adolescence have lived respectable lives upon small earnings, and many who have been led astray by companions. There is to be found among drunkards, and prostitutes, 2000 habituals, four fifths of whom are women—not many, considering the total apprehensions and the number of individuals (30,000) which they represent. But the 2000 are parasitic, lazy, debauched recidivists, for a proper estimate of whose moral and mental qualities, and of their future destiny, the psycho-pathological tape is required. They are, without a moral crutch, unable to guide and support themselves, and, like jetsam and flotsam, drift through society, not realising that they are social pests. Many of them are feeble-minded.

The great majority of petty offenders are (casuals) engaged in honest, often profitable labour, the rewards of which are on occasions put to the worst use—to the detriment of themselves, their homes, dependents, and society. And such, getting into the hands of the authorities three or four times a year, cannot by any stretch of the imagination be reckoned "habitual drunkards" or recidivists, requiring prolonged seclusion in some other place than an 800 cubic feet cell, in which twenty-two out of every twenty-four hours are, as a rule, spent.

In this class, also, are to be found the vagrant and beggar, and they are responsible for 4037 apprehensions—a total far

[1] Each individual in this category may be reckoned to average three and one-third convictions per annum.

short of the breaches of the vagrancy laws. A timid, superstitious, and hospitable public will lodge them in outhouses, and support them rather than report them to the police, and have them put behind bars and bolts, or in labour colonies, or workhouses. The brief term in gaol does no good to the nomad or "knight of the road." Very different treatment is required. The ablution on reception is not considered a boon. On discharge they are again enveloped in filthy rags, and thus the cycle goes on. This class being migratory, and not long amenable to one jurisdiction, contributes few recidivists—fewer than they really are. They are in the proportion of eight males to one female. The hardships are too great for the female sex, except for the hardiest. In a legal sense the attachment of sex may be said not to exist, and, in any sense, the progeny is few, what there is being in infancy decimated by hardships, exposure, and disease. They manifest a conservative element, when, with the approach of winter, the majority seek for months the shelter of the workhouse, and with the advent of spring resume the lines of march. Others seek out the "dosser" houses and night shelters of each town on the line of march.

For a proper understanding of many of the tribe of the wandering foot and weary breast, also, the psycho-pathological tape is required, and a different destiny than the gaol which society has erected for them and for other delinquents and *déséquilibrés* with mental warp, as a fortress of despair, not a house of hope. With truer conceptions of psychology, ethics, and social pathology there is no reason why in coming years the incorrigible, lazy tramp suffering from the *cacoethes ambulandi*, or what German writers designate "vagabundwahnsinn," whose mode of life is a puzzle to ordinary observers, and to the officials of workhouses and night shelters, suggest to the normal man one of great discomfort, misery, and misdirected energy, because twenty miles of the road daily is not accomplished without loss of energy—perhaps having regard to the relative diets little less than is expended by the honest labourer in his eight hours' day—should not find his place in the ranks of the large army of mental degenerates, and thereby of lunacy. But a life of *ennui*, footsoreness, and an outhouse with or without a pallet of straw, or the side of a brick kiln, no more disturbs him than the embedded grime on his skin, and the pediculi and acari which thrive undisturbed on his body. The applica-

tion of the æsthesiometer reveals that the sensory nerve endings are not responsive to the usual stimuli.

In England there were 36,800 apprehensions of tramps, making up a *corps d'armée* of ragged regiments roaming at large over the whole country, with a full knowledge of the roads and the shelters, and billeting themselves *nolens volens* on a hospitable or terrified public, who are thus largely responsible for the existence and continuance of this parasitic army, constantly on the move singly or in couples.

There is no need, it is assumed, to make anything but a casual reference to that large mass of offences (32,500) against education acts, road acts, bye-laws and regulations of police acts, game laws, sanitary laws, etc. They are of little significance in a criminal or delinquent sense. They are bound to exist in all self-governing and progressive communities striving to attain to a more ideal and perfect state, when the humblest, poorest, and least intelligent in the community will be educated up to a full observance of such statutes.

England.

Having dealt at some considerable length with the criminal and delinquent statistics of Scotland, there is no call to write much about those of England. Whatever differences there are in the whole, and in sections, is not due to any racial difference, or to any difference in the laws governing serious crime—these being the same in both countries, and enforced with swift, unerring, and impartial certainty—but rather to a difference in the laws appertaining to petty offenders, and the method, or lack of method, of their application.

The grand total of apprehensions—810,950, or 1 to 40 of population—like the Scottish one, dissolves through convictions (1 to 49), imprisonments (1 to 146), and number of individuals (1 to 220) engaged both in crimes and offences, to 149,300 individuals, of whom 33,000 recidivists, 13,000 of the noxious, anti-social recidivists of the burglarious, fraudulent, and larcenous type being in Class I (or 1 to 2500 of population), and 20,000 in Class II (or 1 to 1630 of the drunken, prostitute, and vagrant order), who are parasitic and passive, and only in small measure anti-social, if, under the present *régime*, they are to be allowed to live at all, and be at large when unoffending.

Both types of recidivist combined are approximately in the proportion of 1 to 1000 of the population.

Statistics of Crimes and Offences and Recidivism for England and Wales, 1903.

Population, 32,716,710. *Apprehensions and Prosecutions for Crimes*, 99,929*; *for Petty Offences*, 711,020. *Total*, 810,950.

	Sex rates.	Crimes known to police.	1. Apprehensions and citations.	2. Convictions.	3. Imprisonments.	4. Number of individuals imprisoned.	5. Number of recidivists free and unconfined.
Class I.—*Crimes.*							
A. Homicides,† grave assaults, cruelty to children	4·5 to 1	18,254	18,050	—	—	—	—
B. Rape, unnatural sexual crimes	—	1,401	1,391	—	—	—	—
C. Malicious injury to property ‡	8 to 1	16,176	16,019	—	—	—	—
D. Crimes against property *with* violence, robbery, housebreaking, burglary .	30 to 1	9,920	3,734	—	—	—	—
E. Crimes against property *without* violence, theft, reset, fraud, forgery .	4·5 to 1	69,145	57,636	—	—	—	—
F. Other crimes . . .	1·5 to 1	3,054	3,099	—	—	—	—
Total of Class I . .	—	—	99,929	—	—	—	(b) 13,000
Class II.—*Petty offences.*							
A. Breach of peace and drunkenness . . .	3 to 1	—	293,259	—	—	—	—
B. Prostitution . . .	—	—	11,530	—	—	—	—
C. Vagrancy, begging, etc.	9 to 1	—	36,298	—	—	—	—
D. Other trivial offences .	10 to 1	—	369,935	—	—	—	—
Total of Class II. .	5 to 1	—	711,022	—	—	—	(a) 20,000
Grand total of I and II	5 to 1	—	810,951	660,300	223,910	149,300	33,000

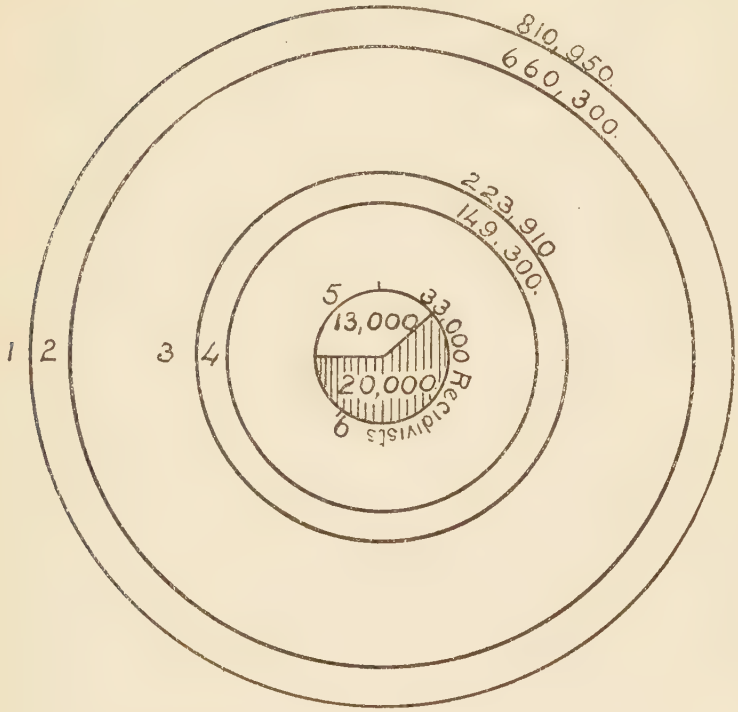
Of the 810,950, there were apprehended, for homicides, assaults, wounding, sexual crimes, crimes against property, *with* or *without* violence, etc., 99,930, or 13·4 *per cent.* of the whole,

* Inclusive of aggravated assaults, assaults on constables, cruelty to children, stealing, etc., classed as "non-indictable."

† Homicides, 388; made known to police, 436.

‡ Arson (fire-raising), 213; made known to police, 272.

Fig. 3.



1. From circumference to centre = apprehensions.
2. ,, ,, ,, = convictions.
3. ,, ,, ,, = imprisonments.
4. ,, ,, ,, = number of individuals imprisoned.
5. Criminal recidivists.
6. Petty offenders recidivists.

and 1 to 327 of the population. All crimes against property totalled 61,370, being 61 *per cent.* of all serious crime, and 7·5 *per cent.* of all crimes and offences, and equivalent to 1 to 533 of the population. Sexual crimes amount to 1·4 *per cent.* of indictable offences.

The petty offences (not the offenders) in Class II number 711,020, or 87 *per cent.* of all crimes and offences, and are in the proportion of 1 to 46 of the population. Of those in this class calling for notice it has to be observed that drunkenness, disorder, prostitution, vagrancy and begging account for 327,530, the apprehensions for the first three being 304,790,

or 1 to 107 of population, and the fourth 36,300, or 1 to 900 (*circa*).

The other petty offences, numbering 369,935, or nearly 52 *per cent.* of all minor offences, are no evidence, either in their numbers or in their nature, of delinquent tendencies, but rather the measure of imperfection of a large section of society not educated to, or not in a position to adapt themselves to, a variety of recent laws, passed with the object of attaining to a more perfect social and civil state.

To a proper understanding both of criminals and offenders, and especially the *habitués* among them, certain civil and social conditions require to be stated, and among these obviously are sex, age, and usual place of abode, housing, training in childhood and youth, education, occupation, civil condition, single or married, widower or widow, living in family or separated, and the probable cause, habits, and frequency of conviction. All these are embraced in the great environmental factor *external* to the criminal, to be discussed later, alongside of other factors in criminality *inherent* in the criminal himself, and evidenced by a physical and mental make-up of such a kind as to suggest that judgment as to a true sense of right and wrong is so warped, that freedom of will to choose between right and wrong does not, in many instances, in reality exist. The presence of congenital mental defect or mental warp, manifesting itself in early life, at adolescence, and later from vicious living, it may be of small degree, is often sufficient to make the acquisition of the most elementary knowledge all but impossible, and, if that be so, what is to be expected in regard to the moral sense? Simply and easily to pronounce them as incorrigible and unsalvable does not solve the difficulty.

International Statistics.

The writer is not in agreement with Dr. E. Mischler, of Vienna, when he remarks that, "it may even be said that in consequence of differences of legislation, the difficulties of an international system of statistics are to a certain extent impossible"; rather he is of opinion that as the criminal laws of every country are based on Roman jurisprudence, and in the main features alike, and as the Greek Kalends would arrive

before the laws of every country could even be approximately assimilated, something should meantime be done practically by legislators and statisticians to bring about a better classification of crimes and offences and their penalties, and a better compilation and tabulation of information as to sex, age, civil condition, housing, wages, education, occupation, frequency of conviction, heredity, mental and physical condition, etc., not merely for the whole but for the various types of crime and petty delinquency. Without these details statistics are not of much use either for national or international purposes. It is surely not beyond the wit of students of psychology and criminology to devise a scheme for presentation to Ministers of Home Affairs and of Justice which would meet a felt want in the study of criminology in relation to treatment and prevention. In every country elaborate machinery for the collection of figures and enumerations exists, and may be doing its work as it understands it, and all the time it does not convey a true impression as to the real condition of affairs, because it not only proceeds on wrong lines, but for the lack of necessary collateral and qualifying information is incomplete. It goes without saying that administrators, psychologists, and statisticians having certain figures presented to them would probably interpret them in different lights and from different standpoints, although there is a common *point de vue* for the three investigators, if they know it, and could combine their knowledge. Mulhall, in his *Dictionary of Statistics*, represents some countries in a very much worse light than Great Britain as to the prevalence of the most noxious forms of recidivism. But it would be hazardous to accept and endorse this, unless the investigator, making allowance for undoubted differences in economic conditions, the laws as to land, property, liberty, education, social characteristics and habits, etc., was prepared to believe that human nature in its virtuous, as in its erring aspects, differed to the degree postulated by these figures in different countries. The factors enumerated above are not all those that have a close bearing on recidivism. The penal systems of civilised countries differ vastly, and there can be no manner of doubt that penal systems have much to do with the vitality and persistence of recidivism everywhere. If diagnosis is wrong the treatment must fail to a very large extent because it is empirical. Could one safely judge of

recidivism, which one cannot, by prison populations per 100,000 of the population, then for Great Britain and Ireland it works out at 63, France 158, Russia 155, Holland 84, Belgium 70, Italy 217, and the United States of America 132. In British prisons there is a daily population of 26,190,[1] in France 60,800, and in Italy 68,800. In the latter country, quite the reverse of this country, crimes against the person are 36·4 *per cent.*, and against property 63 *per cent.* Murders or homicides in Italy, it is stated, reach the staggering total of 3,000 per annum, and constitute a principal feature in Italian crime. In Germany out of every 1000 convicts 378 are said to be recidivists.

Recidivism is said to be increasing in France, Germany, and Italy, but no distinction is had between noxious, aggressive, and dangerous recidivists, and the passive, parasitic kind committing minor offences.

CHAPTER II.

(1) *Sex and Age, and Frequency of Conviction.*

In official statistics this alone of all the points is stated with that fulness which makes the figures valuable, and refers to crimes and offences *en masse*, and also in detail at certain well-defined and critical age periods in life. In this way the proneness of sex to different crimes and offences at certain age periods is made known, and it is significant, from the sex point of view, that in regard to crimes of blood and violence, sexual crimes, crimes against property *with* violence, and the offence of vagrancy, females play a small part. On the other hand, for crimes against property *without* violence, and for the minor offences of drunkenness, breach of the peace, and prostitution, they are strongly in evidence. In Scotland and England, for these important age periods, the relative percentage of crimes and offences was in 1903 as follows :

[1] England 20,760, Scotland 2,880, Ireland 2,550.

Percentage of Criminals and Petty Offenders of Both Sexes at certain Age Periods.

	Scotland.			England.		
	Under 16.	16–21 years.	50 years and over.	Under 16.	16–21 years.	50 years and over.
Crimes.						
Homicides, assaults .	0·2	1·8	10·6	0·7	10·8	10
Rape, unnatural crimes, etc.	2·5	25	12	4	21	14
Crimes against property, with violence . .	20	30	1·6	2	28	5
Crimes against property, without violence . .	27	17	7	18	19	7·4
Petty offences.						
Drunkenness, breach of peace	1·2	10	12·4	—	—	—
Prostitution, etc. . .	—	—	—	—	—	—
Vagrancy . . .	2·4	9·5	22·2	—	—	—

Two facts are revealed by this set of figures, *first*, that from 50 to 88 *per cent.* of these crimes and offences are committed by persons between twenty-two and forty-nine years of age ;[1] *second*, the large number under sixteen engaged in crimes against property, and the small number above fifty years.

Instructive also are the following figures for England, as to the relative proportion of the sexes engaged in indictable and non-indictable crimes of dishonesty at all age periods :

England.	Under 12.	Under 16.	16–21 years.	21–30 years.	30–40 years.	40–50 years.	50–60 years.	Above 60.	All ages.
Indictable crimes against property without violence, theft, reset, fraud, etc. .	—	100·17	100·8	100·11	100·14	100·20	100·20	—	100·12
Larcenies and petty thefts tried in courts of summary jurisdiction . . .	100·6	100·14	100·19	100·20	100·31	100·40	100·40	—	100·25

The point to be observed is the progressive rise of the female criminal, with one exception, as age advances.

[1] Grave assaults over 80 *per cent.*; crimes against property with and without violence from 51 to 65 *per cent.*; and petty offences about 70 *per cent.*

In Scotland the sex ratio for crimes against property, and for petty offences, at three well-defined age periods, is as follows :

	Under 16 years.	16–21 years.	Above 50 years.
Crimes against property without violence	100·17	100·22	100·50
Petty offences of drunkenness, breach of peace, and prostitution . .	100·10	100·36	100·55

Here also will be observed that gradual and steady rise in the female ratio with advancing years. In the first beginning at one-sixth it ends in a half, and in the second beginning at a tenth of the male ratio it also ends in a half.

Sex ratio in relation to frequency of conviction or recidivism is a matter of some moment, and in Scotland is as follows :

Offences and crimes.	3 times.	4–10 times.	11–20 times.	21–50 times.	51–100 times.	101 and upwards.
(*a*) Drunkenness, breach of peace, and prostitution	100·50	100·70	100·70	100·90	100·180	100·330
(*b*) Crimes against property, with violence .	—	100·6	100·2	100·27	—	—
(*c*) Crimes against property, without violence	—	100·26	100·40	100·50	100·130	—

It is strikingly borne out by this last set of figures that as frequency of conviction advances, the female sex advance with it, until ultimately it exceeds the male sex in a remarkable manner. Nowhere is the progressive rise in the female frequency ratio so striking as in the above offences and crimes. In (*a*) class, starting at one-half, as one would expect, it ends by being treble, a fact to be deplored ; and in (*c*), beginning at one-fourth, it ends at one and a third.

It is significant that in England, of those convicted of indictable crimes, 18·5 *per cent.* were under sixteen years of age ; at one time it was higher, but a judicious use of reformatory and industrial schools, and of the lash (birch) in lieu of the prison, has reduced the number. It is still, it will be admitted, a high figure, and one calling for searching inquiry in order to determine how far it is due to their organisation and how far to the

lack of opportunity for doing good, and to the lack of education, training, and a trade. These juvenile felons and delinquents have not attained adolescence, and the inhibitory power of the brain, it is safe to say, has not been properly or fully developed.

Education.

In England, of 188,678 convicted prisoners 19 *per cent.* could neither read nor write (a fact at the first glance not creditable to a country with free institutions, and for years in the enjoyment of free and compulsory elementary education); 78 *per cent.* could "read and write imperfectly," 2·4 *per cent.* "could read and write well," and "0·08 had a superior education." These startling figures would seem to justify Victor Hugo's estimate of the part illiteracy plays in crime. But any deduction from those figures must be qualified by the statement that a great many, from mental incapacity and weak-mindedness from birth and in early life, were incapable of receiving that elementary instruction which would raise them in the social scale above the lower labouring classes. Not a few who do possess sufficient mental capacity are in this position from parental neglect and bad upbringing. These percentages, it should be explained, are given for all sorts and conditions of prisoners *en masse*. It would be much more helpful to those on the outlook for preventive measures if the state of education was given for prisoners in each of the different classes of criminals and offenders, and likewise an estimate of their moral and mental capacity. It is well known, however, that crimes against the person show a lower level of intelligence than crimes against property. But the psychological and psychopathological tape, although of profound value, has hitherto not been applied in this country. The scale of intelligence and capacity might profitably be arranged somewhat as follows:

(1) Mentally defective—the simplest facts understood, but an incapacity to perceive or reason about the relationship between facts.

(2) Slow, dull capacity for perceiving relationships between facts in limited fields with long and continuous effort.

(3) Slow, very slow in thought generally, but with time understanding is reached.

(4) Slow, intelligent, sure of knowledge when once acquired.

(5) Intelligent, capable of understanding with much effort.
(6) Very able.

This line of inquiry, conducted by competent psychologists, would settle why illiteracy, and a state not far removed from it, is so prevalent among criminals and offenders in England and Scotland.

Occupation.

To be of value, this, like education, should be given for criminals and offenders in each class, and not *en masse* as is done at present. The state of education reached and ascertained practically decides what the vocation in life will be. In England, of 188,680 prisoners, 38 *per cent.* were styled "labourers," 25 *per cent.* "trades and handicrafts," 3·7 *per cent.* "prostitutes," and 1·8 *per cent.* "domestic servants." And of the occupations of 268 convicts in Scotland in 1905, 110 of whom had former sentences of penal servitude, that for "labourers" amounted to 56 *per cent.*, "handicrafts and trades," 30 *per cent.*; "professional," 2 *per cent.*; and miscellaneous, 11 *per cent.* Of the 268, 19 *per cent.* were guilty of homicides and grave assaults, 40 *per cent.* of housebreaking, burglary, and garotte robberies, 30 *per cent.* of theft, reset, and fraud, and 9 *per cent.* of rape and unnatural sexual crimes.

From a return prepared for me, with the authority of the Prison Commissioners, in 1905, of 370 male convicts and long term prisoners in Scotland, 199 of whom were convicted of housebreaking and burglary with violence, no less than 67 *per cent.* of the 199 were in the social scale "labourers" by occupation, or something very much akin to it, and 31 *per cent.* had learned handicrafts. The latter figure—a large one for this class—is not surprising, although disappointing, as among them there are to be found skilled workmen capable of earning more than a competency or living wage, by honest industry. Of 110 convicted of theft, reset, fraud, etc., 47 *per cent.* were "labourers," and 41 *per cent.* "skilled workmen," and 6 *per cent.* professional men. Of 55 convicted of homicides and assaults, 54 *per cent.* were "labourers," and 27 *per cent.* "tradesmen," and of 14 convicted of sexual crimes, 80 *per cent.* belonged to the labouring classes, and 21 *per cent.* had acquired the ordinary trades. In all the four classes of crime 60 *per cent.* were of the labouring classes, and 33 *per cent.* had learned

trades. Some trades yield a larger proportion than others, but unless one knew the number of each in the general population no good purpose would be served by further analysis. It is clear that the great majority committing the four kinds of crimes come from the labouring and least educated class, and that many of them are illiterate. It should not be forgotten that the "labouring" class form the largest section of the population. Between occupation and education, as between illiteracy and crimes and offences, there is, however, a close intimacy. The obvious moral, in spite of Lombroso's contention to the contrary, is that ignorance is a danger to the State.

No information whatever is vouchsafed in judicial statistics, or blue books, as to the nature of the home (if any), the early training of criminals and offenders and their civil condition as to marriage, etc., as to habits, temperament, mental capacity, etc.—information absolutely essential to a right understanding and proper treatment of criminality and delinquency of the recidivist order. It is evident that our criminal and delinquent statistics, to be of use and helpful to reformers, require re-casting.

Interchange of Crimes, and of Crimes and Offences, and of Criminals and Offenders.

The writer has been at some pains to find out how far this takes place, and the answer must be only to a slight and negligeable extent. The types of felons engaging in the different crimes in Class I (Tables I and II) differ from each other in regard to the dominant mental characteristics[1]—revenge, malice, lust, acquisitiveness, and avarice—governing each to such an extent that there is little or no interchange save between those who attack property *with* and *without* violence, in which it is considerable.

The large number of petty offenders (misdemeanants) in Class II commingle freely during the year and through life their offences of drunkenness, breach of peace, and prostitution, and, to a much less extent, vagrancy and begging. But few of them pass into the category of major criminals, and these

[1] *Vide* Presidential Address to Medico-Psychological Association in 1905, by Dr. D. Nicolson, the Lord Chancellor's Visitor in Lunacy.

few are the drunkards and riotous, whose frequent deeds of violence, disorder, and cruelty more often than not, by the merest accident, resulting in slight bodily injury to their victims, end in their being charged with homicide and indictable assaults. It could not be otherwise.

An intoxicated person, in a state of frenzy, is a constant and potential danger in a community. Reckless and unmeasured violence are the characteristics of the individual thus temporarily insane. Indeed, there is not, within the whole range of lunacy, a more complete picture of insanity than that presented by an intoxicated person, every sense being disordered.

Prostitutes frequently vary their mode of living and offending with drunkenness, and less often with theft, their victims, as a rule intoxicated or apparently so, being persons of the opposite sex. A minority of vagrants and tramps are apprehended for drunkenness, breach of peace, assaults, fire-raising, and malicious injury to property, but the great majority are comparatively harmless, homeless, aimless, wandering tramps and beggars.[1]

With the view of testing to what extent an interchange took place between the perpetrators of the four major crimes I have prepared a return of 370 convicts and long-term prisoners in Scotland, convicted of (1) homicides, assaults, etc.; (2) crimes against property *with* violence; and (3) *without* violence; and (4) crimes against chastity. The result, an interesting one, finds expression in the following figures:

	1. No previous conviction.	2. Convicted of homicides, assaults, etc.	3. Convicted of burglary, housebreaking, etc.	4. Convicted of larceny, thefts, fraud, etc.	5. Convicted of sexual crimes.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
1. Homicides, assaults, etc. . . .	49	35	6	9	*Nil.*
2. Housebreaking, burglary, etc. .	1·8	1·2	68·5	28·5	*Nil.*
3. Thefts, fraud, reset, etc. . . .	4·5	1·5	30·6	63·4	*Nil.*
4. Sexual crimes .	53·3	33	*Nil.*	*Nil.*	13

[1] It does not require a Sherlock Holmes to distinguish the *bonâ fide* tramp with tatterdemalion, unkempt locks, gaping boots, and grimed skin, from the *bonâ fide* labourer in search of work.

It is strikingly noticeable how the three dominant mental factors in human composition, *viz.*, malice, acquisitiveness, and lust govern so largely the criminal problem, and the irrepressible assertiveness of acquisitiveness and avarice, as shown in columns 3 and 4, and the fact of few or none having "no previous convictions." With homicides it is the reverse ; nearly one half have had no previous convictions of any kind, and very few manifest that degree of acquisitiveness of which the criminal law takes cognizance. With crimes against chastity (sexual) more than one half had no previous convictions of any kind, 13 *per cent.* repeat, and none have shown any inclination for burglary and theft. The fact of there being such a small proportion of repeaters suggests that many may have passed into asylums. A minority of physically and mentally weak ones in short, degenerates, vary their larcenous propensities with over-indulgence in alcohol, and not infrequently do their pilfering in a confused mental state, with the result that the conception of *meum* and *tuum*, never clear, disappears, and they are taken by the sufferers or by the police *flagrante delicto.* How far they are "free agents" at any time may be a moot question. Not so, however, with the perpetrators of housebreaking, robbery, etc. After a big haul yielding plunder such as a whole year of honest labour could not give, they, like the apostles of *haute finance* who manage by stratagem to keep outside the meshes of the criminal law, indulge the palate to excess, although in the execution of their aggressive work they are sober, cunning, and in the possession of all their faculties, more often than not very considerable. This is the type of recidivism at once most vital, noxious, and costly to the commonwealth.

These observations are called for in order, firstly, to understand and appreciate how far crimes themselves, and how far crimes and petty offences are interchangeable, and secondly, to correct a wrong impression given by those penologists who consider that alcoholic excess is closely identified with all crimes and offences, indeed, in the opinion of some of them, falling little short of direct cause and effect. This idea is not shared by Mr. C. E. Troup, C.B., Permanent Under-Secretary of State for the Home Department, and neither is it by the writer for the reasons already stated. Mr. Troup says "no clear connection could be traced between indictable crimes as a whole and prosecutions

for drunkenness."[1] It would, however, be near the truth to say that the bulk of the victims of robbery are at the time more or less intoxicated.

CHAPTER III.

Geographical Distribution and Loci of Recidivism.

Without exception recidivism of every description is in the main in every country a product of urban life. It is rarely met with in rural districts. The felon who robs a country mansion is a city dweller, and the *loci* in cities of recidivists of both kinds are, as a rule, the slum, overcrowded, wretched abodes in which the decencies of life are known to be impossible. And under present economic conditions it is bound to increase as it is doing, in consequence of the trend of modern life which is bringing about, in every country, a depopulation of rural districts and a corresponding increase in the poorest and most squalid districts of cities and towns. Apart from the changing economic conditions and the ways of industry, there can be no question that intemperance in alcohol in any country has much to do with slum areas and the submerged twentieth who are content to dwell in them and inhale their noxious moral and material atmosphere. It is safe to say that it would scarcely be possible for a saint to live in them and not be contaminated. The contagion is virulent and paralysing.

The distribution per 10,000 of population in Scotland (33 counties and 4 cities) of crimes of violence, crimes against property, malicious mischief, and sexual crimes by persons proceeded against in the Justiciary Courts and in Summary Courts is shown by the accompanying table, illustrated by the shaded map. I am not aware that the geographical distribution in Scotland of crimes has been attempted before: it has, I am aware, been done in regard to certain petty offences, such as inebriety and disorder.

It is convenient, having regard to the wide range from 4 to

[1] Introduction to the *Judicial Statistics for England*, 1893.

Geographical Distribution of "Crime" in Scotland.

95 per 10,000 which prevails, to have six shadings, the two darkest representing the chief haunts of the criminal recidivist.

I. 61 *to* 95 *per* 10,000:		V. 21 *to* 30:	
Glasgow City	95	Aberdeenshire	26
Lanarkshire	70	Forfar	21
Linlithgowshire	78	Argyll	.24
II. 51 *to* 60:		Inverness	27
Edinburgh City	60	Caithness	22
Aberdeen City	60	Kincardine	21
Dundee City	59	Roxburgh	30
Ayr	60	Selkirk	28
Stirling	58	Wigtown	25
Renfrew	58	Bute	24
Fife	55	VI. 5 *to* 20:	
Clackmannan	53	Perth	14
III. 41 *to* 50:		Ross	17
Haddington	44	Banff	19
Dumfries	44	Berwick	18
Dumbarton	49	Kirkcudbright	20
Peebles	41	Nairn	20
IV. 31 *to* 40:		Sutherland	5
Midlothian	40	Orkney	5
Elgin	35	Shetland	5
Kinross	34		

Anyone in the least familiar with Scotland will be able to see at a glance that its criminality is mainly confined to the four cities and to the smallest but most populous area of the six groups, in the midlands, that embracing Lanarkshire, Linlithgowshire, Renfrew, Ayr, and Fife. There is no mistaking the position of Glasgow and Lanarkshire with its million and a quarter of population, or nearly one fourth of all Scotland. Some of the counties in Group II owe their unfortunate positions in the list to the presence of provincial towns like Greenock, Paisley, Ayr, Kilmarnock, Kirkcaldy, and Dumfermline. In Groups I and II the populations are for the most part mining and industrial. Practically north of the Forth and Clyde, save the cities of Dundee and Aberdeen, in the Highlands and Islands, and North-Eastern District, which comprise the fishing, crofting, and agricultural counties, the amount of crime is small, and likewise in the pastoral border counties save Dumfries, touching almost the

vanishing point in the county of Sutherland, the Orkney and Shetland Isles, the Western Isles, and Outer Hebrides.

Between the "criminal" map of Scotland and the "lunacy" map[1] there is no similarity, but between it and the "inebriety"[2] one there is. It does not follow, however, from this, for reasons already adduced, that there is any intimate connection between the two in the areas in which both bulk largely.

CHAPTER IV.

Criminal Anthropology.

Few will be disposed to dispute the classification of criminals as a whole put forward some years ago by Lombroso, Benedikt, Havelock Ellis, and others:

First: criminals by passion.—Persons who act on the spur of the moment, and are known by their good lives and genuine remorse. There is no deliberation.

Second: occasional criminals.—Not naturally inclined to crime, but are weak and easily led. Bad heredity is prominent in this class.

Third: habitual criminals[3]*—recidivists.*—Made up (1) of the weak and helpless, mentally and physically, and (2) those deliberately adopting a career of crime. The "professional" is the aristocrat among criminals, and is often skilled and intelligent.

Fourth: instinctive criminal.—He is the congenital or *criminel né* of the French, the *l'uomo delinquente* of the Italian school, and is decreed by nature to be such. He is regarded by Lombroso as morally insane. His type is clearly of the degenerate stock.

Fifth: the insane criminal.—He is, in the opinion of the Italian school, an exaggeration of the instinctive.

This, for most purposes, is a reasonable and scientific classification. The fierce disputations of past years have gathered round the "instinctive" criminal, of whose existence no psycho-

[1] British Association, Economic Section, J. F. Sutherland, *Transactions*, 1902.
[2] British Medical Association, Psychological Section, J. F. Sutherland, 1898.
[3] Not to be confounded with habitual petty offenders and habitual drunkards.

logist or penologist is in doubt. The majority of observers contend that he is so rare as to be *une quantité négligeable*, and that is my own view, but, on the other hand, a minority of brilliant, tenacious workers hold that he is in evidence everywhere, and therefore what, in the view of the majority, applies to a very few is made by the minority to apply to the many, a fact which, if it were true, and could be substantiated, would make the costly task of regeneration and reformation a hopeless one, and would mean for the criminal himself elimination, and perpetual sequestration. It is alleged by them that more frequent abnormal conformation and asymmetry of the head estimated by irregularities, by the cephalic and facial indices, by the weight and size of the lower jaw, prominent cheek bones, large outstanding ears (for which the nurse is much to blame in many instances), palate, genital organs, the presence of the lemurian appendix, shortness of stature, etc., are met with.

Lombroso of Turin, his henchman Ferri, Professor of Law, at Rome, and the other disciples of the sub-Alpine school of criminal anthropology, find ranged against them as uncompromising opponents in regard to the *criminel né* the leaders of the Northern school in France, Germany, and Belgium—to wit, Naecke (Leipsic), Dallemagne (Brussels), and Manouvrier (Paris).

Ferri, although not postulating a type exclusively anatomical, holds that the *l'uomo delinquente*, the criminal man, is a detached and complete personality, at once biological, psychological, and social, his criminality being the result of a triple coalescence of factors which are most aptly described by the French school as *facteur anthropologique*, *facteur de milieu physique*, and *facteur de milieu social*. Every competent observer recognises that a man may be born with all the stigmata associated with crime and delinquency, and yet live—provided he finds in his environment (*son milieu*) a sufficient resisting force—without the commission of crimes or petty offences, and conversely it is true, perhaps less frequently, he may find in his hereditary antecedents the power to resist the evil influences of his environment.

Dallemagne speaks of degeneracy as an abstract term comprising diverse physiological processes, with this feature in common, that they tend to the extinction of the individual and

the species. Viewed in this light it is a normal biological process amounting almost to selection operating under the influence of individual factors, especially the environmental one. Dallemagne applies his principles to groups sufficiently uniform to admit of individualising them. In imbeciles there would be no criminality, degeneracy having ruined all capacity of *intention*; in some imbeciles and feeble-minded folk, degeneracy having damaged the intellect so far as to leave only instinctive thoughts a delinquent predisposition has been observed in the "possessed" and impulsive types. On the other side it has to be stated that there have been many instances in which there was no indication of degeneracy independent of the criminal act itself.

Physical stigmata of all kinds are also found among non-criminals in all grades of society, and it has yet to be proved that in proportion these are more prevalent among habitual criminals than among the population as a whole, and especially among the classes from which criminals come. It is important to remember that physical degeneration does not necessarily entail mental degradation, and that criminality may exist without demonstrable stigmata. And further, it must not be forgotten that many people presenting several of the stigmata of physical degeneration are to be found among the honest, industrious, ethical, and religious members of society. The contention that a skilled criminal anthropologist can spot an "instinctive" after short observation was put to the test before the *savants* in a convict prison in Paris, during the year of the International Prison Congress there, and in one instance created much merriment, as well as showing the absurdity of it all. A mental specialist of great eminence, and a *citoyen* of irreproachable character donned the prison garb and fell in line with the convicts under review in the Mazas prison. He was asked to step back two paces as one of the "instinctives"? The tests proved correct in some of the cases. But this case, as well as other considerations, show, apart from the umbra it casts over the regenerative problem engaging the attention of penologists, legislators, and social reformers, the need for a more chastened mood on the part of "cock-sure" criminal anthropologists than has hitherto been manifested. The remedy for recidivism is assuredly not here. Indeed, it would seem almost as justifiable to talk dogmatically of a *Bacillus criminalis* not

yet isolated from the human economy, and subjected to culturé medias. The present environmental crime culture areas in cities, it is safe to conclude, cannot be surpassed.

Criminal Anthropometry.

Its application to criminality is intelligible in two aspects, as a means of identification[1] and of revealing accurately the degree of physical degeneration to be met with among recidivists, just as the psycho-meter of the specialist, to which frequent allusion has been made in these pages, will, when called into requisition as it ought to be, reveal psychical defects, moral insensibility, perversity, and obsessions, with the accessory moral anomalies, imprudence and lack of forethought, defective intelligence congenital or supervening before adolescence. The results of an anthropometrical investigation made in the case of 370 male convicts and long-term prisoners this year is submitted along with *cartes graphiques*.[2] These are conclusive as to the physical degeneracy which stature reveals when compared with the general population. On the other hand, is it so far astray from the mean of those in their own station of life and engaging in the same kind of work when at liberty? As yet this has not been determined even approximately.

The following tables, prepared by Mr. J. F. Tocher from the data supplied, give the results of the analysis of 370 criminals, 75 *per cent.* of whom were recidivists:

TABLE I.—*Stature* (*inches*).

	Mean.		Standard deviation.	
		P.E.		P.E.
No. 1	64·64	·1121	2·3683	·0795
„ 2	64·98	·1822	2·6745	·1289
„ 3	65·29	·2038	2·2816	·1441
„ 4	65·15	·4186	2·5568	·2958
„ 5	64·84	·0860	2·4703	·0610

[1] In this connection the importance of the Bertillon method of taking finger-prints is not overlooked.

[2] In this connection the assistance of Dr. Sinclair, Medical Officer, H.M. Prison, Barlinnie, and Dr. McWalter, Medical Officer to H.M. Convict Prison, Peterhead, is recognised with thanks.

TABLE II.—*Head Length* (*mm.*).

	Mean.	P.E.	Standard deviation.	P.E.
No. 1	195·32	·302	6·3650	·2114
„ 2	197·16	·419	6·0565	·2918
„ 3	198·42	·631	7·0576	·4457
„ 4	195·33	·700	4·0173	·4648
„ 5	196·27	·226	6·4356	·1590

TABLE III.—*Head Breadth* (*mm.*).

	Mean.	P.E.	Standard deviation.	P.E.
No. 1	152·90	·223	4·6988	·1577
„ 2	153·93	·289	4·2358	·2041
„ 3	153·51	·432	4·8296	·3050
„ 4	152·06	1·064	6·4967	·7516
„ 5	153·51	·159	4·5647	·1127

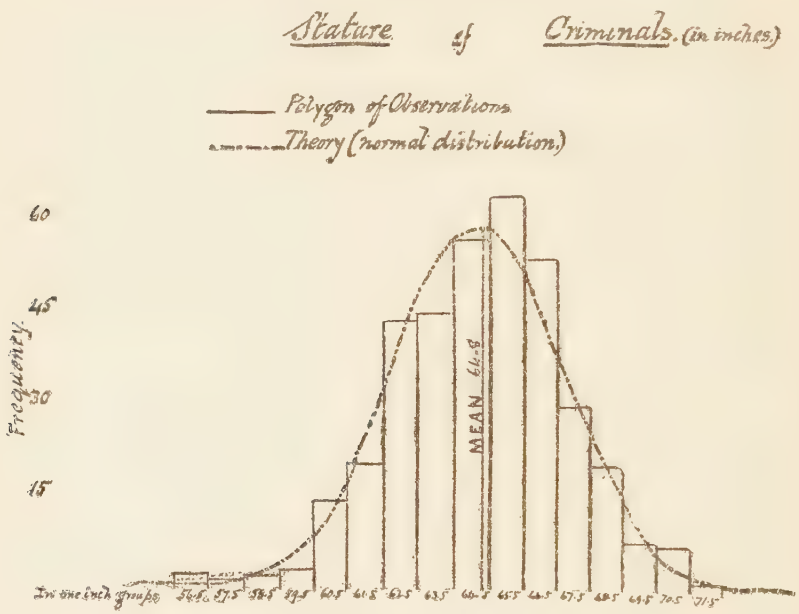
No. 1, burglary, robbery, and assault; No. 2, theft, fraud, reset, etc.; No. 3, murder and assaults; No. 4, offences against chastity; No. 5, total number of habitual criminals.

P.E. means "probable error"; mm. millimetres.

Stature.—There is no material difference in stature among the four classes into which the criminals have been divided. The greatest difference (·64 in.) exists between Nos. 1 and 3, but this has no special significance. The average stature of the criminals as a whole (64·84 in.) is, however, significantly less than that of the lunacy population of Scotland, and is less by about ·75 in. than the mean stature of English criminals. (Macdonell, *Biometrika*, vol. i, p. 192.) When compared with the general population the difference is much greater than one would expect from random sampling, and one concludes, therefore, that in stature the criminals form a special class of the population, although among themselves the differences in stature are merely random differences.

Head-length.—The analysis of the data for head-length shows that there is a considerable difference in this character between Class 3 (convicted of murder and assault) and the other classes. On comparing the difference between the mean of Classes 1 and 3 with its probable error, it is found to be much

greater than one would expect if it was due merely to sampling (the difference is more than four times its probable error), and one concludes that on the average the head-length of this class of 57 members is greater than Class 1 with 202 members. Class 1 (forming as it does the bulk of the criminal population) has a mean head less than that of the criminal population as a whole, while Class 2 (thieves) with a head-length of 197·16 mm. approaches Class 3 and differs from Class 1 by more than three times the probable error of the difference. One concludes that Classes 2 and 3 resemble one another in head-length and



differ markedly from the other two classes (1 and 4). On an average Classes 2 and 3 have longer heads than the bulk of the lunacy population, or of the general population of the country.

Head-breadth.—Just as in stature, there is no striking or material difference in head-breadth among the four classes. The differences are such as we might reasonably expect from random sampling of the criminal population. The Scottish criminal has, however, a broader head than the English criminal. The mean head-breath of the latter is 150·3 mm. (Macdonell, *Biometrika*, vol. i, p. 185) while that of the former is 153·5 mm.

(1) Conclusions. Judging from the data supplied (measurements of about 370 habitual criminals), the Scottish criminal is a much shorter man on the average than the general population. There is, however, very little difference in stature among the various classes of criminals.

(2) Those habitual criminals who have been convicted of murder and assault, and, in a lesser degree, those convicted of theft, differ considerably in head-length from those convicted of robbery and other crimes. They have, on an average, longer heads.

(3) Criminals in Scotland have broader heads than English criminals. They differ considerably in head-breadth from the general population, but among themselves there is no material difference when class is compared with class.

From invaluable data [1] provided by J. F. Tocher [2] regarding the insane in Scotland it would appear that while the criminal's head is on the average longer and broader than the inmates of Scottish asylums, he is, as stated, somewhat shorter in stature. It is impossible, for lack of data, to compare either as to stature, head-lengths and breadths, the cephalic index, pigmentation, etc., with the general population, but it can be done with selected classes of the population thus :

	Stature (inches).	Head-length (mm.).	Breadth (mm.).	$100\frac{B}{L}$
Cambridge graduates . .	68·86	193·5	154·0	79·6
British Association members .	67·16	198·1	155·5	78·2
Aberdeenshire rural . . .	67·72	—	—	—
General hospital . . .	67·16	190·4	149·3	78·5
Scottish lunatic population .	65·86	195·5	151·5	77·6
English criminals . . .	65·54	191·7	150·4	77·2
Scottish ,, . . .	64·84	196·3	153·1	78·0

The criminal from this comparison is from three to four inches shorter in stature than the selected classes. From the anthropometral survey made by the writer,[3] among the fringes of the Scottish population in the Hebrides—Orkney, Caithness and Shetland (including the islands of Foula, Fair Isle,

[1] "Anthropometry of Scottish Insane," *Biometrika*, vol. v, part 3, February, 1907.

[2] Mr. Tocher, with the help of the Henderson Trust, Edinburgh, made an anthropometric survey of the Scottish asylums, which is now published. It is a colossal piece of statistical work, done by precise mathematical methods.

[3] Aided by the Carnegie Research Fund.

Unst, Whalsay and Stroma)—there can be no doubt, speaking from general observation, that the completed analysis of the returns will show that both the insane and the criminal are much shorter than those people residing along the northern and western littoral and in those remote islands in which the callipers and stature meter has not hitherto been applied. These islanders of Norse extraction will also reveal a stature as high as Ayrshire, the Stewartry,[1] and the West-ends of our cities, and much higher than the average for Scotland.

Criminal and Delinquent Physiognomy.

Whatever is claimed for the existence of mental and physical shortcomings among a large number of recidivists—and there is much—the existence of a criminal physiognomy cannot be gainsaid. There is no name for that elusive yet unmistakable physiognomy which recidivists present to the observer. It is as real as the facial types met with in asylums. Coarseness, scars, and a *sui generis* expression, tell their own tale. They are the hall-marks of alcoholism, debauchery, ruffianism, dishonesty, lying, and unchastity, each criminal and delinquent, according to the vocation he has chosen and followed, presenting appearances which do not make it a matter of great difficulty to determine fairly correctly into which class he is to be relegated.

There is thus what one might designate a functional physiognomy resulting from habits of crime, delinquency, debauchery, vice and disease, malnutrition and poverty, in short from an abnormal and unhygienic existence, mentally and materially different from the physiognomy as well as the stigmata and arrested development following ante-natal injury of the embryonic neuroblasts of the frontal cortex area in congenital imbeciles and in the feeble-minded, typified in some petty thieves, prostitutes, and vagrants. And further, if the ante-natal causation be at work in the posterior association areas, various psychic defects are met with in sexual perverts, habitual drunkards, and alcoholic criminals prone to deeds of violence and cruelty.

In time the causes of this functional and passing physiognomy will produce those permanent psychic changes brought about by damage to the neurons in the posterior association areas of

[1] The shires of Kirkcudbright and Wigtown.

the brain, and a fixed physiognomy. It is likely that the functional and the pathological become blended in some of the criminal and delinquent types. The furtive, restless eye, a look of boldness, cunning, and determination, is specially characteristic of the "professional" criminal, who, although lost to all sense of honour except that ascribed to him in works of fiction, feels and resents loss of liberty. The stolid apathy of helplessness, the abject look of passivity are writ large on the countenances of many petty delinquents, to whom frequent and brief losses of liberty mean nothing, and for whom the police or prison-cell has neither terror nor a sense of shame. The observer knows right well that the striking physiognomy seen, and resulting from years devoted either to crimes or petty offences, is, in a very large number of instances, of a composite character, the appearances directly traceable to the mode of life lived being inwoven with evidences of mental defect, or mental warp of the genetous or acquired type.

Biometry and National Eugenics.

Biometry is a comparatively new science; a still newer science is that of national eugenics. The foundations of both have been laid by Francis Galton and Karl Pearson. Professor Pearson[1] has placed biometry on a sound basis, and has shown that since the problems are those involving variations of all kinds, mathematics is as essential for its proper study as it is for the study of physics. By the use of precise mathematical methods, Pearson has been able to show that many physical and mental characters are correlated—that is to say, many of them are on the average associated with one another. The association is never absolute, but only partial, the intensity of the association varying with the character considered. Francis Galton defined eugenics as "the study of agencies under social control that may improve or impair the racial qualities of future generations, either physically or mentally."

The doctrine of natural selection is based upon the hypothesis that the healthier individual has a better chance of surviving in the struggle with physical and organic environment, and in consequence is better able to beget and rear an offspring inheriting advantageous characteristics; a profitable variation is, according to Karl Pearson, "seized on by natural selection and

[1] He applies to heredity and biological data methods similar to those employed by actuaries in calculating life tables.

perpetuated by heredity," the science of biometrics measuring the degrees of variation met with, and indicating to what extent variations are inherited, and the question of interest is whether in families which present variation above or below the normal that variation will be transmitted and in what degree?

While Professor Karl Pearson's statistics and investigations go to show that degenerate stocks under existing social conditions—in other words, a humanitarian *régime*—are not short lived, and have more than the average family, it would hardly be safe to accept this beyond two generations; indeed, it would not be a matter of much difficulty or doubt to predict what would happen in the third and successive generations if unions of the "unfit" continued. It can be shown that the stock would be wiped out. And while it is exceedingly doubtful how far this doctrine of degenerate stocks being neither short-lived nor failing to beget the average size of family is true of one generation of habitual drunkards, and of habitual criminals and delinquents, it is not doubtful of succeeding generations of these. The experience of the writer as to longevity and the procreative capacity of degenerates is in quite an opposite direction, for reasons recorded in the development of this monograph.

Comte declared that sociology is impossible without biology, and to this doctrine any disciple of race efficiency may subscribe without reservation.

CHAPTER V.

Prevalence and Significance of Insanity among the Authors of the different Crimes.

Perhaps in the investigation made and now set forth the *pièce de resistance* is the conclusion now submitted that for a proper and effective study of recidivism in any of its forms the psychological and psycho-pathological method of inquiry, aided and supported by the great environmental one, is that most likely to combat the evil, and to prepare the way for more rational and remedial measures. The following table is both highly instructive and suggestive on this point as showing the liability to certifiable insanity, and, by implication, mental states more or less allied to the certifiable one.

It amounts to this, that of the apprehensions during the year for homicides and assaults, 1 in 30 become insane before

Indictable crimes in England for 1903.	Apprehensions.	Percentage of each.	Number of insane before and after trial.	Percentage of insane.	Ratio of insanity to apprehensions.
A. Homicides, assaults, etc.	1656	2·7	54	39	1 in 30
B. Sexual crimes.	1391	2·3	16	11·5	1 in 87
C. Arson	213	·35	6	4·3	1 in 35
C. Malicious injury to property	216	·35	5	3·5	1 in 43
D. Housebreaking, robbery, etc., with violence	3734	6·58	16 } 58	11·5 } 41·7	1 in 233
E. Theft, reset, fraud, etc., without violence	54,745	88·3	42	30·2	1 in 1300
	61,955	100	139	100	1 in 445

or after trial; for sexual crimes 1 in 87; arson (fire-raising) 1 in 35; robbery, burglary, house-breaking, *with* violence, 1 in 233; and for larcenies, fraud, reset, etc., *without* violence, 1 in 1300. Calculating for crimes A, B, and C, on the number and percentage of insanity found respectively in D and E, *viz.*, 58 persons and 41·7 *per cent.*, that for homicides and assaults should be 1·5 persons and not 54, and the percentage 1·2 and not 39. Or reversing it if the insanity ratio in the former applied to the latter, the latter would not merely produce, as it does, 58 insane, but 1780, or thirty times as many! Similarly, if crimes against chastity produced insanity in the same ratio as crimes against property, it would amount to 1 *per cent.* and not 11·5 *per cent.*, and arson ·15 *per cent.* and not 4·3 *per cent.*, or thirty times less. Thus it appears that certifiable insanity is much more frequently met with amongst those who commit crimes in which the elements of malice, passion, revenge, and lust predominate, than among those in which acquisitiveness and avarice are the governing mental factors. Among the authors of crimes of blood and violence against the person[1] are to be found a small number of homicidal maniacs, paranoiacs, etc., both with declared and carefully concealed delusions of persecution, a larger number of a coarse, brutal type who act from motives of malice, revenge, and jealousy, and a still larger number of drunkards and intoxicated persons who do violence

[1] Has no reference to housebreakers, burglars, and thieves who in the prosecution of their calling commit deeds of violence.

while in that state of exaltation and recklessness which is induced by the toxic agent. The point to be observed is that there is relatively little insanity occurring among the plundering and thieving class which presents the ugliest and most persistent phase of recidivism in any country, and yet so much of it among the perpetrators of other crimes with little recidivism resulting. It has again to be stated that among the petty thieving class there are a number of degenerate and weak-minded persons.

For Scotland the relative prevalence of insanity is indicated *infra :*

	Prisoners received.	Became insane.	Ratio of insane to commitments.	Percentage of commitments.	Percentage of insane.
A. Crimes of violence .	1445	20	1 in 72	*14*	30
B. Sexual crimes . .	432	13	1 in 33	*4*	20
C. Malicious mischief .	652	6	1 in 108	*6·4*	9
D. Housebreaking, robbery, theft, etc. . .	7670	28	1 in 274	*75*	41
	10199	67	1 in 152	*100*	*100*

Although in the foregoing figures prison receptions take the place of the apprehensions in the preceding English table, the percentage of insane is much the same, and the conclusions reached are almost identical ; that is to say, insanity is much more rife among the authors of crimes of violence, sexual crimes, and malicious mischief than among plundering criminals.

If in Scotland insanity was only as prevalent among the authors of crimes of violence as it is among the plundering and thieving classes, then among the former, instead of 20, the number certified would be 5 ; and similarly among the authors of crimes against chastity it would be 1·5, and not 13.

The following table has reference to the different types of insanity, and their relative frequency among prisoners committed in Scotland in 1903 for the different crimes and offences specified in column 1. The insanities were established in bar of trial, within eight days of reception, after being eight days in prison, and on the expiry of sentences, as a rule, of brief duration. The figures convey the same meaning as those

	Imbecility or feeble-mindedness.	Dementia.	Mania.	Delusional.	General paralysis.	Epilepsy and epileptic dementia.	Alcoholic insanity and D.T.'s.	Other forms.	Total.
(1) Crimes of blood and violence	1	5	5	1	—	1	—	5	18
(2) Crimes and offences against chastity	4	5	1	3	2	—	—	—	15
(3) Crimes indicative of avarice and acquisitiveness	2	8	8	2	4	2	—	1	27
(4) Malicious mischief	2	—	—	1	1	—	1	—	5
(5) Breach of peace, drunk and incapable and disorderly	7	6	7	5	3	2	5	4	39
(6) Vagrancy and begging	4	5	2	1	—	—	—	—	12
(7) Other offences	—	1	1	1	—	—	2	—	5
Total	20	30	24	14	10	5	8	10	121

already given. The frequency of general paralysis is noticeable, being 8 *per cent.* of the whole; imbecility, 16·5 *per cent.*; mania, 20 *per cent.*; dementia, 25 *per cent.*; delusional insanity, 11 *per cent.*; and alcoholic insanity and delirium tremens, 7 *per cent.*

The following figures referable to the occupations of criminals and petty offenders who were known to be insane within eight days of reception, after being in prison for eight days, and on

	Labourers.	Handicrafts.	Miners.	Vagrants.	Housewives.	In business.	Engineers, etc.	Hawkers.	Others.	Total.
(1) Crimes of blood and violence	6	1	1	—	1	—	—	—	1	10
(2) Crimes and offences against chastity	6	—	1	—	—	1	1	—	1	10
(3) Crimes indicative of avarice and acquisitiveness	14	4	1	1	1	1	—	—	3	25
(4) Malicious mischief	2	—	—	—	—	1	—	2	—	5
(5) Breach of peace and drunkenness	19	4	3	2	4	1	1	5	3	42
(6) Vagrancy and begging	9	—	—	1	—	—	—	—	—	10
(7) Other offences	3	—	1	—	1	—	—	1	1	7
Total	59	9	7	4	7	4	2	8	9	109

the expiry of sentences as a rule short, bear out what has been previously stated, more than one half being labourers. And this proportion is maintained, not merely for the whole, but for every one of the crimes and petty offences tabulated. The "labourer," in proportion to his numerical strength in the general population, contributes, it is safe to say, treble as many of those becoming insane as his class would justify.

Recidivism in Relation to Lunacy.

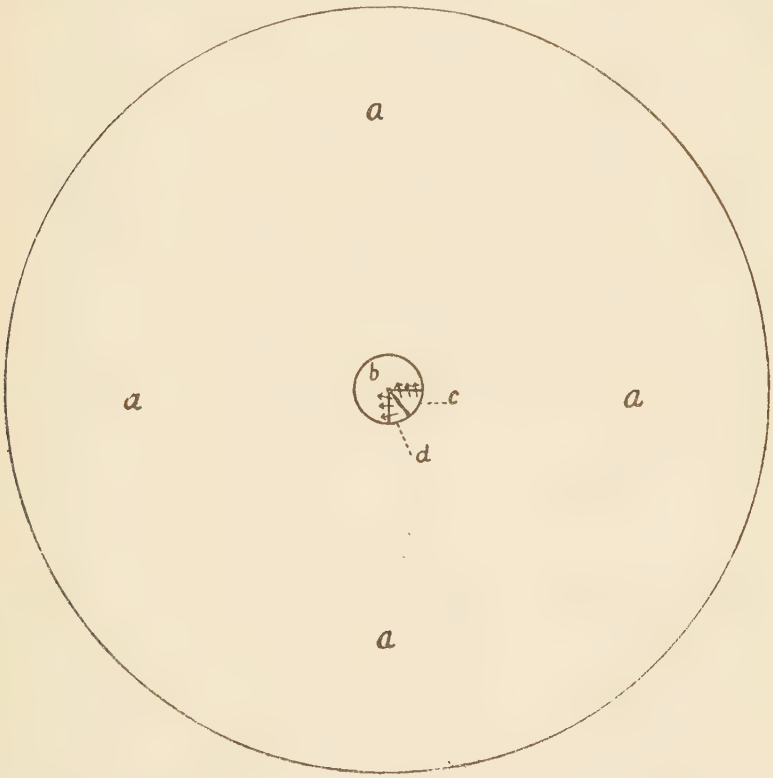
The large circle (*a*) is designed to represent the population of Great Britain, the smaller one the imbecile and insane (*b*) as revealed by last census (153,000), and criminal recidivists (*d*) (14,700), and petty offender recidivists (*c*) (23,000). Of criminal recidivists it is not wide of the mark to say that one-third or 5,000, are pathological specimens and suffering from physical and mental degeneracy characterised by mental warp, instability, and feeble-mindedness. These defects are to be found chiefly among petty thieves, sexual perverts, and the authors of crimes of blood, violence, and cruelty associated with drunkenness. Of petty offender recidivists it is equally safe to hold that two-thirds, or 15,300, are pathological in the same sense. These include habitual drunkards, prostitutes, and vagrants. England's share of pathological specimens requiring classification and differentiation of treatment, indeed something different from the present cast-iron system, would by this calculation be about 17,600, and Scotland's 2,500, or figures nearly equal to their respective present daily prison populations.[1] Under present methods, penal treatment has no effect, certainly no reformatory effect, except to prolong their lives by the sanatorium treatment, aptly referred to by the Home Secretary.[2]

The arrow-heads indicate the interchanges which take place, some of the degenerate, feeble-minded, and morally insane recidivists passing from (*c*) and (*d*) into (*b*), the insane zone, from which a proportion emerge after a brief—by some considered a too brief residence. Except in the case of some petty thieves, prostitutes, drunkards and breakers of the peace of

[1] The ratio of both kinds per 1000 of population would be from ·5 to ·6.

[2] The Right Hon. H. Gladstone, M.P., Home Secretary, at City of London Magistrates' Club, December, 1907.

both sexes, and habitual drunkards of the female sex, who pass from (*c*) to (*d*), there is little or no interchange between the perpetrators of crimes and of petty offences. As a matter of fact and experience those who occasionally, and it may be accidentally, find their way from (*c*) to (*d*) are in reality petty offender recidivists. It is difficult to see how the stay can be prolonged in asylums under the present lunacy laws. For the great majority it would perhaps be better to evolve a some-



what different kind of institution from the asylum or prison, such as has been foreshadowed in labour colonies, inebriate retreats, and reformatories such as are to be found at Borstal and Chatham.

The eminent Tuscan jurist Rosadi,[1] in his recent work on *The Lost Ones of the Race*, appears strongly in support of the psychiater in connecting crimes with mental diseases, and the

[1] *Tra la Perduta Gente*, by Signor Rosadi, 1907.

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"diseased developments" in the moral world of Carlyle are now admitted by the law and practice of Italy. "Inhibitory paresis," the *bête noire* of the juridical doctrinaire, he puts down as a pathological condition capable of proof, and from his unrivalled experience shows that crime may be coincident with morbid deviations from physical health, that these deviations are both inherited and acquired, and that, as a prophylactic on the entrance of the child into school, something like a *dossier* should be prepared by the school doctor, which would be available, if need be, for reference at any period of his life. The views and writings of this authority are calculated to give a strong impetus to the solution of the problem.

The uniformity of the past in every detail of prison life, suggestive of a mechanical, automatic existence, need only be perpetuated in one, *viz.*, compulsory detention for varying and indeterminate periods. The various kinds of labour, and the conditions under which these will be carried out as to clothing, diet; visits, letter-writing, rewards, room furniture, education, and training naturally would cease, to a very large extent, to be conventional, unnatural, and monotonous, and the faculty of speech would no longer be repressed, but exercised under safeguards.

The Criminal Law in Relation to Free Will, Responsibility, and Punishment.

In the foregoing pages some idea was given of the hot disputations that have gathered round the place of criminal anthropology in relation to recidivism. And round the complex questions of "heredity" and "degeneracy" there is even a greater variety of opinion, just as there is over the attitude of the criminal law to free will, responsibility, and punishment. One is thankful in the contemplation of so much confusion and contradiction in regard to these thorny points to be able to record that, in regard to the overshadowing environmental factor, the prophylactic measures required, and the need for the further evolution of our penal system in the light of further knowledge and experience, reformers are practically agreed. For after all these latter are the factors that mainly work for the good of society and of society's enemies, enhanced, no doubt, if sound and correct views could be stated with modera-

tion and accepted in regard to the other debatable and difficult questions.

It would serve no useful purpose to elaborate here the attitude of the criminal law and its interpreters at different periods towards crimes as a whole and specific crimes, and the punishments meted out to deter law breakers. That is a matter of history, ethics, and jurisprudence. A brief outline will suffice.

In the usual conception of crime the intentional and voluntary (*i.e.*, free will) transgression of the law is assumed in spite of protests to the effect that such a conception fits no fact in human experience. This was the dictum of Erskine, the eminent jurist, and accepted by his contemporaries and successors on the bench, and opposed by psychologists and metaphysicians. It will be apparent that at once the question of the absolute or relative action of free will is raised. Volition, according to Huxley, is the impression which arises when the idea of a bodily or mental action is accompanied by the desire that the action should be done, and the question now before us is whether this volition is free or determined. Such a conception should give pause to the advocates of the doctrine, and the lengths it will carry them, that the will is free, seeing how it is acted and reacted upon by such motive-forming causes on mind as well as body as those of environment and natural laws.

And nowhere in this respect is the attitude of the criminal law[1] more mistaken than in relation to the vast proportion of petty offences connected with drunkenness, and a small proportion of crimes, those of blood, violence, and cruelty indissolubly associated with the same cause. It is a most anomalous attitude if it be accepted that the state of intoxication is a brief state of insanity, but the anomaly is heightened by contrast with the attitude of the civil law, which to all intents and purposes shields the drunkard from the evil and disastrous consequences of civil acts, testamentary dispositions and contracts, etc., made in a state of intoxication. The writer has heard judges ask witnesses both in civil and criminal actions, who appeared to be intoxicated while giving evidence, to "stand down." Manifestly volition is seriously affected by a toxic

[1] "The Jurisprudence of Intoxication," by J. F. Sutherland, *Edinburgh Juridical Review*, July, 1898.

agent from without, acting directly on the brain, and remotely after it has induced permanent pathological changes of the brain and other viscera.

To put the question of intoxication in relation to crime and responsibility on a rational footing jurists in the United States have long been in the van, and none more than Mr. Clark Bell, President of the Medico-Legal Society of New York.

A safe ethical and sociological maxim is that the idea of wrong depends upon the moral, intellectual, and physical damage or injury which volition and action brings to society. The idea of freedom has been, as stated, the basis of criminal law, and where believed in without qualification or reserve has set up the *lex talionis* with its train of oppression, blood, and martyrdom. The legal conception of free will is as ill-founded and as reprehensible as the unqualified Calvinistic doctrine of predestination in which freedom of will has no part. Both are extremes, and the middle course of relativity governed by environmental and psycho-pathological conditions is one to meet with acceptance. It is not to be inferred that an actual or potential criminal is to be at large and society unprotected until it was ascertained whether or in what degree he was innocent or guilty from the standpoint of freedom of will. For such contingencies society and its law makers have, to a very large extent, made provision. Maudsley, whose views have always commanded respect, writes "that every student of sociology knows that just as there are manifold gradations of intelligence from the highest intellect to the lowest idiocy, so also as natural phenomena there are many degrees of moral power between the energy of a well-fashioned and disciplined will and the complete absence of moral sense." The relativity of will power, of moral sense, and the exercise of both thus set up inevitably leads up to relative responsibility and relative guilt. A doctrine such as this, made to fit into the criminal law and criminal reform, would apply if the punishment fitted the criminal in a major sense and the crime in a minor, or not at all, as is now being strenuously urged. The knowledge of defective organisation in the case of many criminals and offenders cannot but tend to justice and more tolerant views of, and less hostile feelings towards, so many of the doubtful cases inhabiting the borderland between imbecility and insanity on the one hand, and crime and delinquency on the other, and to bring about

this altered view the metaphysical notion of man which Maudsley aptly describes "as an abstract being endowed with a certain fixed moral potentiality to do the right and to eschew the wrong, is as little applicable to each human being born into the world as the notion of a certain fixed intellectual power would be applicable to each being." Further, he postulates that in regard to erring nature it must be received as a scientific axiom that there is no study to which the inductive method of research is not applicable, and that such research should be prosecuted on scientific lines. To this every investigator will say, Amen.

A caveat requires to be made to the effect that this doctrine of relativity of freedom of will and of responsibility is not intended to apply to the "professional" criminal, who is the greatest menace to society, and who, to gratify indefensible acquisitive propensities, will, to attain his object of plunder, stick at nothing, his watchword being in too many instances "your money or your life."

Dr. C. Mercier,[1] whose writings and opinions have found acceptance at home and abroad, both at the hands of jurists and physicians, puts the matter thus: "Desire is the motive of all conduct," and traces it "to one primitive and fundamental craving which lies at the root of all human as of all animal dispositions." Further, "Desire antecedes choice, and *à fortiori* antecedes volition, and if there be no disorder of will or intelligence, then I think responsibility attaches as soon as desire obtains the sanction of will."

It will be felt from this line of argument that there can be no breach of the criminal law if in the act the will of the agent had no real part. For such a proposition there are three special lines of defence—the physiological, the psychological, and the metaphysical, the author's extensive survey of the first revealing among criminals and offenders abnormalities, somatic, cranial, and facial; the second, moral insensibility, lack of ordinary intelligence, perverted sentimentality, and extreme emotionalism not met with to anything like the same extent in the general population. To such a being tack on the effects of a vicious environment—for environment moulds character—and is it surprising that it should be held by so many competent observers in regard to many criminals and offenders that there

[1] *Criminal Responsibility*, Clarendon Press.

is no such thing as absolute freedom of the will, but at the most a relative sanction to the commission of misdeeds?

But the trend of this discussion in regard to volition and responsibility at once raises the question of punishment, which must follow, because, call it by what name you may, the loss of liberty incurred by feeble-minded and degenerate habituals, including habitual drunkards, through detention in asylums, labour colonies, etc., spells to these breakers of the law punishment, it may be more agreeable than the present, although this will to some extent depend on the time limit, and many of them, although mentally warped and defective, will not appreciate society's decision in regard to their good, and will with the intelligence they possess clamour for liberty.

Punishment cannot be dispensed with even in asylums, in which the proportion of the "intellectually dead" is much greater than would be the case in labour colonies, inebriate retreats and reformatories. Insane persons, both with defective and disordered intellects are for misconduct deprived of *parole*, of privileges which they value and appreciate more or less, such as tobacco, entertainments, dances, etc., and conform to discipline. Indeed, the conduct of the insane of every degree is influenced more or less by the ordinary motives of reward and punishment which govern the conduct of the sane, and in like manner the conduct of criminals and delinquents with or without mental warp. And while that mental defect or warp, evident to the trained observer, lasts and unfits them for absolute freedom, their conduct as to petty larceny, drunkenness, prostitution, and vagrancy habitually indulged in, will, under present conditions as to living and conduct, continue. With that restricted freedom under supervision after adequate detention in reformatories, etc., which could not fail to bring about a better physique and morale, and to inculcate habits of industry, order, and cleanliness, it would be reasonable to look for considerable improvements.

There is a legal and judicial view of punishment which requires to be stated, that is, the deterrent one—deterrent to the guilty, and through them to others. Except in regard to "professional criminals" (swindlers, resetters, housebreakers, garotters), there could be no greater fallacy. From the mouths of judges the deterrent view falls on the ears of habitual drunkards, weakminded petty thieves, the authors of deeds of

violence and cruelty committed in a state of intoxication, in the dock practically unheeded, and to those at large who may see it in print or hear of it, it might as well not have been uttered. Considering the object in view, this may be unfortunate, but it is the case all the same. With the felon referred to it is different. His conduct is deliberate, and the risks of return to prison are coolly faced, because he often escapes detection and justice, which is an encouragement to wrong-doing.

Not once but often the writer has heard judges of the supreme court, of sheriff courts, and of police courts solemnly declare that in the interest of society and of public safety and order, the sentences passed on the perpetrators of murder, homicide, grave assaults, etc., and on "drunks and disorderlies," would act as a deterrent to the culprits, and to others who contemplated breaches of the law. And yet immediately following severe sentences for homicides, assaults, and cruelty to children, the greater part of which were committed by reckless persons in an intoxicated or semi-intoxicated state, and for the offences of drunkenness and disorderly conduct, the record of apprehensions for them all a day or two later touched a high figure. Underlying the warning, excellent in its objects, uttered, there is this fallacy in regard to the crimes and offences specified, that the authors do not take drink, whatever may be the cause for the habit—either a neurosis or social custom—in order to commit these crimes and offences. These are incidents of one or of many bouts producing a sodden state of mind and body, and the marvel is that, when the week-end debauches and their sordid results are unfolded *ad nauseam* on Monday morning in police courts, not one but many homicides are the results. It is not the fault of the assailants that these are not multiplied a hundredfold.

What is the reasonable and rational conclusion to be deduced from this line of argument? Surely one that it is not safe to dogmatise as to the responsibility of the largest section of petty offenders and a small section of criminals, the "inverts" and "perverts," the "can't workers," and the "born tireds," if with the average citizen reared and living under normal and healthy conditions, absolutism as to free will, and anything like perfection as to conduct is not looked for, but rather relativity. There is much to be said for the relativity of the responsibility of the derelicts of society with all the drawbacks and disad-

vantages of environment, bad heredity, and a degeneracy bequeathed or acquired.

Justice in the highest and best sense of the term renounces the law of vengeance, and human laws are presumed to follow closely after this ideal, and it might well be that the main purpose of punishment should be the protection of society and of property by the reclamation by improved methods of habitual criminals and offenders who are salvable, and by the sequestration of those not so under safeguards. And when this is done punishment will at least more aptly fit the criminal and offender, and lessen crimes and offences than it has hitherto done.

CHAPTER VI.

The Insanity Test of Responsibility.

There is little use in going back a century to Lord Hales' test of responsibility, *viz.*, that in order to exempt from punishment there must be total deprivation of understanding and memory. It is discredited by jurists as well as alienists. Lord Mansfield's attitude to the test in 1812 is a decided advance on Hales' in so far that to be answerable the accused must possess a mind capable of distinguishing right from wrong generally, and not in relation to the particular act. But in 1843 the point was again raised in an acute form, and the House of Lords propounded certain questions to the judges with reference to the law of insanity with the view to an authoritative exposition which would in future guide courts of justice. These answers, constituting the law of England upon the point, were to the effect that to establish a defence on the ground of insanity it must be proved that at the time of committing the act accused was labouring under such a defect of reason of the mind as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The question of right and wrong in the abstract is here abandoned. It was to be put, not only in reference *to the particular act* charged, but also *at the time of committing it.* Some jurists, and most alienists,

are dissatisfied with the insanity test as it stands, but, whatever individual views may be of the criminal law in relation to responsibility thus laid down, it must be apparent to the most ordinary observer that, by the acceptance of the authorised test itself, the intoxicated authors of crime, especially homicides, manslaughter, serious assaults, and these form 80 *per cent.* of such crimes implying violence and recklessness, would not be held responsible—there is no gainsaying that—and would either be dealt with as insane or punished by long confinement in prison. In either case society would be protected against such potentially dangerous elements in its midst, and justice fully satisfied.

CHAPTER VII.

Causation of Recidivism.

The causes of recidivism, operating singly, or, as they often do, in combination, are given as nearly as possible in the order of their significance.

I. (A) *External.*

(*a*) Slumdom, with its rookeries, "farmed out" houses, and one-roomed dwellings.

(*b*) Intemperance.

(*c*) Illiteracy, and lack of proper training in childhood and youth.

(*d*) Idleness after school life, resulting from that incapacity for work which would yield a living wage, due to lack of manual training.

(B) *Inherent.*

Physical and mental degeneracy of the hereditary and acquired types.

II. The dominant mental characteristics of avarice, acquisitiveness, malice, and lust.

III. Penal systems, and criminal and delinquent laws.

(A) *External.*—There is that other environment, post-natal, of so much moment in human destiny. It embraces all the economic and social conditions favourable to the production and continuance of recidivism. This is the great post-natal environmental factor in its numerous and far-reaching aspects,

and so long as the conditions and environment continue, so long will recidivists be reared. Some of these may be mentioned: insanitary slum dwellings and one-roomed houses, in which the decencies of life are not possible (birth, death, sleeping, ablutions, etc., taking place without regard to privacy), alcoholic excess perhaps as often the sequence as the cause of human degeneration, idleness and debauchery, disregard of public opinion, ignorance, a miasmatic atmosphere from the cradle to adolescence and onwards inimical to health and morals, the lack of suitable employment adapted to the physical and mental capacity of the individual, the absence of a living wage for unremitting and, it may be, uncongenial toil. These sensibly affect a majority of recidivists, and are clearly preventable by a readjustment of the social condition, a better distribution of the profits of labour, the sweeping away without compensation of slumdom, and the substitution of healthy and cheap dwellings rendered possible by a change in the laws appertaining to land, and the education of this class to live in human and decent ways.

The lamentable conditions of the housing of a large section of the population in evidence in cities and towns are illustrated by the following figures:

Of one-roomed dwellings, etc., there were, in 1907, in Glasgow, 23·8 *per cent.*; in 1880, when John Bright delivered his rectorial address to the students of Glasgow University, 30 *per cent.* In Manchester, in 1907, the percentage was only 1·90.

The Board of Trade Return for 1907 is so remarkable, indeed staggering, as to the relative positions of these two cities in the matter of housing, as to justify its reproduction in full:[1]

	Glasgow.[2] *per cent.*	Manchester. *per cent.*
One-roomed houses .	23·8	1·90
Two-roomed houses .	47·9	6·09
Three-roomed houses	17·5	4·43
Four-roomed houses	5·8	42·15
Five and upwards .	5	45·44

[1] Not less interesting in this connection is the return issued by the authority of the Secretary for Scotland (Mr. Sinclair) showing the percentage of population in Scottish towns having more than two in a room. The figures are as follows: Glasgow, 54·7; Paisley, 58·7; Greenock, 54·1; Dundee, 49·4; Leith, 43·8; Aberdeen, 38·1; Edinburgh, 32·9; and Perth, 28·2 *per cent.*

[2] It is only fair to add that it is generally believed that the floor space of a

Equally significant and as striking is the return for Scotland of "more than four in a room," issued with the authority of the Scottish Secretary (Mr. Sinclair):

	Number of people.	*Per cent.* of total population.
Wishaw	5,692	27·2
Coatbridge	9,138	24·7
Airdrie	4,963	22·2
Motherwell	6,574	21·6
Hamilton	6,670	20·3
Glasgow	83,197	10·9
Govan	10,780	14
Partick	5,702	10·5
Rutherglen	2,671	16·5
Pollokshaws	2,086	18·6
Greenock	7,598	11·1
Port Glasgow	2,312	16·6
Johnstone	2,200	20·9
Paisley	9,337	11·7
Clydebank	3,377	18·0
Dumbarton	2,643	13·2
Kilmarnock	5,150	15·0
Edinburgh	14,943	4·7
Dundee	11,938	7·4
Aberdeen	4,069	2·6
Linlithgow County	12,507	19
Scotland	427,563	9·5

The industrial towns of Lanarkshire, five of the towns on the Firth of Clyde, three of the suburbs of Glasgow, and the county of Linlithgow do not stand well in this matter, and compare unfavourably with Edinburgh, Dundee, and Aberdeen, with comparatively low *percentages* of "more than four in a room." The high *percentages* for certain areas coincide with the prevalence of criminality and delinquency (pp. 34–36). It is more than a mere coincidence; it vividly suggests something like cause and effect.

(B) *Inherent.*—Degeneracy of the genetic kind *plus* an unfavourable ante-natal environment, makes those with this

single-room apartment in Glasgow is equal to a two-roomed one in Manchester. But taken all in all Glasgow does not stand well compared with Manchester when every allowance is made.

hereditary mark unstable and incapable of appreciating and following the standard of life and conduct—wide enough in all conscience—which society has laid down for the guidance of its members. Much infringement of the moral law and its commands is tolerated before the criminal laws of a free country interpose. As society is constituted selection is out of the question, and there is thus no remedy for this as there is for the unfavourable ante-natal environment produced by toxines and traumatism. Owing to comparative sterility and utter indifference to every law, Divine and human, and a high mortality among degenerates, their numbers do not increase. Environment *in utero* begins to operate from the moment of fertilisation, and holds the organism in its grip.

Degeneracy.

This is a comprehensive term physically as well as mentally, which as yet has only a relative meaning and value, and it is doubtful if it will ever have anything other. Dr. John Macpherson, Commissioner on Lunacy for Scotland, who has studied the question, has given me his views.[1] "For general purposes," he says, "the word 'degenerate' is restricted to the feeble or defective manifestation or development of qualities which are common to a race or species. The definition is an arbitrary one, for variation is continuous and gradual from the mean of any quality to the most aberrant specimens whose places are at the extreme end of the abscissa of the curve of which the mean is the centre. All we can say is that a living being is degenerate when to a certain degree, more or less indefinite, it falls short of the type of the qualities of its race or species. Imbeciles are degenerate, but they merge by continuous gradation into the normal type of mind through every degree of increasing and perfected intelligence. In the same way deformities are signs of degeneration, but there are all degrees of deformity which gradually become unrecognisable in the perfect animal form." The adverse circumstances which induce acquired as distinguished from genetic degeneration, and which depend solely upon variations of the fertilised ovum such as traumatism, the toxines of alcoholic, syphilitic, and microbic origin, are ante-natal (intra-uterine), applied at an

[1] *Vide* "Morison Lectures," Royal College of Physicians, Edinburgh, 1906.

early stage of the ontogeny, and before the development of the organism is completed, and post-natal, resulting from such environmental factors as diet, toxines of the alcoholic and syphilitic types, the nature of the occupation, insanitary dwellings, etc.

It is believed by biologists that within certain limits the earlier the organism is subjected to inimical conditions the greater will be the interference with its development, and the more pronounced will be the degeneration. And if this position be accepted as a feasible one is it to be wondered that among criminals there are so many degenerates? It is held by biologists that the male embryo is much more liable to variation and degeneration than the female. Does this in any way explain the greater number of male criminal degenerates than of females? Another proof of the degeneracy prevalent among criminals is the relative sterility in evidence. Their ranks are mainly recruited in a way already explained. There is this great difference between genetic and acquired variation, that the former is considered, by the best and by a majority of observers, hereditary, and the latter is not transmissible. Genetic degeneration as things are, and, indeed, as they are likely to be, is beyond control, there being no artificial selection; "acquired" is clearly preventable.

Heredity.

One has not to penetrate far into the labyrinths of biology and heredity to discover the truth of Balzac's profound observation that "heredity is a sort of maze in which science loses itself." This observation contains no reflection on the high priests in this domain of science, to wit, Gregor Mendel[1] the Abbot of Brünn, Francis Galton,[2] Bateson,[3] Weismann,[4] Ribot,[5] De Vries, and Karl Pearson. It is the prevailing opinion of biologists that the *inborn* characteristics of an organism, whether physical or psychical, normal or abnormal, are transmissible in varying degrees. This is true of longevity, fecundity, and feature resemblance resulting from the blending of the characters of the two parents, and a bias towards the

[1] *Theories of Heredity.*
[2] *Natural Inheritance.*
[3] *Materials for the Study of Variation.*
[4] *The Germ Plasm: A Theory of Heredity.*
[5] *Heredity.*

persistence of characters (*continuity*), in fact a kind of organic racial inertia in a stock, as distinguished from that other tendency towards departures above and below the mean (*variations*) which is at once the hope and despair of social reformers.

Weismann's dictum that there is no certainty of the transmission of "acquired" characters holds the field. He is supported by Galton, who had little belief in the inheritance of characters acquired during the lifetime of the parents. Inborn changes of germinal origin (germ-plasm) are inherited and are therefore liable to transmission, in this respect fundamentally differing from the bodily modifications or structural changes in the organism due to peculiarities in function and environment. And while there is proof that all variations except sterility are transmissible, though not always transmitted, there is little or none as to the transmission of "modifications" or "acquired" characters. It is well known that the literature of inheritance is charged not only with much that is anecdotal, such as the albino child born to a negro and negress, implying certainty where there is none as to the male parent, but also with the transmission of peculiarities more or less trivial, and as often as not the correlates of what is significant.

Kant was one of the first to express his firm disbelief in the transmission of individual peculiarities, but he did not define what he thought should be excluded from the bundle of inheritance. And this is true of the progeny of habitual criminals and habitual delinquents. With them the male parent is often an unknown or uncertain quantity.

According to Professor de Vries' theories of "mutation" no new species can be established without variation, "natural selection" explaining the "survival" but not the arrival "of the fittest." There is thus the greatest difference between "germinal variations before or during fertilisation" of a constitutional, blastogenic, and endogenous character, and "acquired characters" or "modifications" of a somatic, exogenous, and non-transmissible type due to those environmental and functional influences which Galton speaks of as "nurture." Scientific scepticism as to the transmissibility of "acquired characters" does not blind one to the importance of "nurture," for it can be shown that an appropriate environment is the necessary correlate of a normal inheritance, and that changes in environment and function may provoke variations in the germ-plasm.

In either case by means of natural selection the less fit variants are speedily or slowly, roughly or gently eliminated.

On the other hand, Jonathan Hutchinson is firm in the belief that with the sperm and germ supplied by parents there may pass to the offspring tendencies to the reproduction of all that these parents had acquired up to the date of sexual congress. The bulk of scientific opinion is against this view.

But what is its bearing on disease in general, nervous disease, habitual drunkenness, and crime? Sir T. Clifford Allbutt[1] strikingly observes: "Disease is a state of a living organism, a balance of function more unstable than that which we call health; its causes may be imported or the system may rock from some implicit defect, but the disease itself is a perturbation which contains no elements essentially different from those of health, but elements presented in a different and less useful order."

Dr. Leslie Mackenzie,[2] writing of cardiac hypertrophy running in families, says the constitution that made the father liable would also make the child, but this is the inheritance of a constitutional, and not acquired character as many imagine.

In regard to nervous diseases, Binswanger, of Jena, an eminent psychiatrist, has stated that he has not found evidence to show that a mental or nervous disease acquired during the individual life is, as such, or in partial expression, inherited by the offspring, but his difficulty was to find a case where it could be safely maintained that the first occurrence of the disease was due to external influence. For the few illustrations by the experimental method which might go to prove the possibility of the inheritance of an "acquired" character it is well known that there are hundreds of failures.

The part which habitual drunkenness in one or both parents has been known to play in the production of familiar modifications has to be looked at closely, but before coming to the conclusion that definite structural results of alcoholic poisoning of the parents' body are transmitted to the offspring, it has to be borne in mind that the intemperate habits of the parent or parents may be the expression of an inherited psycho-pathic disposition, and this is certainly transmitted to the progeny; that the saturation of the body with alcohol has a direct effect

[1] *System of Medicine*, vol. i, 1896.

[2] *Scottish Med. and Surg. Journ.*, 1900.

on the nutrition and developmental vigour of the germ-cells, and that the offspring of drunkards often become accustomed to alcohol as part of their food, from the days of suckling onwards. In cases of habitual drunkenness, without the evidence of a psycho-pathic temperament, the offspring run the chance of possessing that temperament. There can be no doubt that alcoholic excess is prejudicial to the race, and to the individual, *pace* Dr. Archdall Reid, who looks upon it as a potent natural selector eliminating the weak and rendering the survivors and their offspring immune to its ravages. But there seems a conflict of opinion as to the theoretical interpretations of the observed facts. That it is prejudicial by lessening the nutritive capacity of the mother, not merely affecting maternity, but directly through inheritance, there can be no doubt. There are so many cases of bodily and nervous diseases, of insanity and delinquency among the offspring of habitual drunkards, that the possibility of coincidence is excluded. In Germany it is not a matter of doubt that the high rate of criminals among illegitimate children (one-tenth of German births) is artificially created.

The view that mankind has a range of psychical variation as large as the physical does not appear to Professor J. Arthur Thomson[1] to be supported by facts. Karl Pearson[2] after years of investigation came to the conclusion that the degree of resemblance of the physical and mental characters of children is one and the same, that is, we inherit in the same way and at the same rate our parents' tempers, conscientiousness, shyness, ability, etc., as we inherit their stature, features, forearm, span, etc. This seems a natural as well as a feasible conclusion.

Mr. Heron,[3] founding upon three different assumptions, finds that 1, 1·5, or 2 *per cent.* of the adult population have been at one or other period of their lives insane. There is much to be said in favour of the view that the insane diathesis is inherited with as high an intensity as any physical or mental characteristic of man, and whatever light may be thrown upon matters of detail by further statistics the broad conclusion is one of great importance.

[1] *Heredity.*

[2] *Journ. of Anthropological Institute*, vol. xxxii.

[3] *The Inheritance of the Insane Diathesis*, D. Heron, M.A., 1907.

By the so-called interference of humanitarianism with the laws of natural selection by means of modern hygienic and therapeutic methods which multiply the relatively unfit, the race has been duly warned by Herbert Spencer, Bernard Shaw and others. But it should not be forgotten that among the "unfits" so protected there are many good specimens of the race, mentally and bodily, who simply want the temporary shelter which modern methods provide. The relatively unfit, no doubt, have at present a better chance of survival than at any other epoch in the history of mankind. Karl Pearson has pointed out that 25 *per cent.* of the married couples in Britain produce 50 *per cent.* of the next generation, and that being so he indicates how much the future of the race is dependent on the bodily and mental characteristics of the 25 *per cent.*

When one has been through the mazes of heredity and returned bewildered, one may find consolation in the memorable words of Sir Thomas Browne, the author of the *Religio Medici*: "Bless not thyself that thou wast born in Athens, but among thy multiplied acknowledgments lift up one hand to Heaven that thou wast born of honest parents, that modesty, humility, and veracity lay in the same egg, and came into the world with thee."

There is no gainsaying the fact that, in spite of the fluctuating statistics of different asylums on the point, heredity is still the most potent causal factor in the production of insanity. The percentage set down to this cause varies little when compared with that set down to alcohol and syphilis, which, in a short space of time, varies so immensely in the returns of the same institution as at once to suggest that it much depends on the *point-de-vue*, and if there is a sudden and striking accession, say, to the number of general paralytics, there is very likely an equal diminution in the types of insanity and nervous diseases which simulate general paralysis. It is certain that a union of two persons, one or both of whom are neurotic, will eventuate in an insane or neurotic offspring, and that certain forms, some more than others, of insanity, in one or both parents antecedent to conception, from which they have recovered, are very apt to recur in their offspring, or, if not, a neurosis of some kind may be looked for. How does this reasoning apply to the great bulk of professional criminals? In no way. Criminality of the most noxious kind is, as a rule,

carried on by persons in no sense mentally unstable, feeble-minded, or obsessed; it is neither a latent nor an acquired nervous lesion, and as such it cannot be reproduced by one or both parents addicted to criminal ways. The female, idle and debauched, as often as not, is the willing tool of the bold, scheming male. It is the case that a succession to criminal ways, which has been ascribed to heredity, will be found with more reason to be traceable to environment in its many contaminating and debasing aspects. It is the climax of absurdity to suppose that such criminals breed their kind, as dwarfs and giants physically breed their kind, or as neurotics, epileptics, deaf-mutes, and persons suffering from certain types of insanity breed theirs. There is no evidence to show that the "professional criminal" transmits acquired criminal traits. On this head it is well to hear what two so eminent authorities as Dr. George Savage and Dr. Mott have to say:

The former, in the Lumleian lectures, 1907, says: "I accept it as a fact that no mutilation of, or late acquisition by a parent will be passed on to children, but I must insist upon it that there is a very potent passing of some tendency to neurosis." This is the furthest advance made, and accepted by observers as a fair statement of the case.

Dr. Mott significantly asks: "Can a stock which is sound mentally become unsound by its members being subjected to an unfavourable environment? Many people deny the possibility of mutation in the germ-plasm, but as the nervous system is the latest and most complex and differentiated tissue in structure and function, mutations and variations may occur in consequence of favourable or unfavourable environment. The commingling of the germ-cells of two stocks of suitable or unsuitable temperaments may, by a happy or unfortunate chance, produce sporadic genius or sporadic insanity."

The part which heredity is supposed to play in the manifestation of criminal tendencies has, by writers, been greatly overstated. The heredity of psychical characteristics of one or both parents, modified by union, in relation to genius, mediocrity, dulness, certain forms of insanity, epilepsy, deaf-mutism, like the heredity of physical characteristics as to size, colour, feature, etc., is admitted by the best investigators, but the heredity of acquired characters is not, and is otherwise satisfactorily explained. Because among thousands of genuine criminal recidi-

vists an investigation of criminal records brings to light a few such with three or four generations traced, it would be rash to conclude that heredity in crime is proved. The male parent of such offspring, who is the more aggressive of the two, is often one of doubt. In many families yielding two or three felons, criminality, for several reasons of a kind adverse to the criminal and his progeny, and in spite of unfavourable surroundings, ceases to appear.

Criminal genealogical trees, as rare as the Baobabs of West Africa or the gigantic pines of California, presented in graphic style by criminological believers in heredity, with broods of three or four generations in the branches, serve a purpose, but these do not prove that burglars breed burglars, as wolves do wolves.

Whatever value there might be in the heredity contention is obscured and swamped by the environmental factor embracing, as it does, housing, education, ethical and manual training, and healthy associations, etc. The absence of these sufficiently explains the rare cases of criminal continuity in criminological collections. Where, however, the heredity of mental warp and instability may be looked for and found is in the case of the congenitally weak or the psycho-pathological specimens met with about the time of puberty or later, who drift through life without a settled purpose, without the slightest regard for the dignity of honest labour, with a striking lack of moral sense and self-control, and with a great lack of proportion in their mental outlook. Not a few specimens of such are to be found among petty thieves, vagrants, prostitutes, and sexual perverts. But among those where the argument in favour of hereditary transmission looks most formidable it is sensibly influenced by the environmental factor.

No one who has had experience of the criminal and the petty delinquent classes doubts that a considerable number of the units are weak-minded, and mentally and morally defective, and obsessed in various directions. A closer scrutiny and investigation of them, of their upbringing and habits—and this requires time, patience, and a special training to discover the weak points in their moral and psychical armour—at once reveal the truth of this. As one glances over the brief laconic story of crimes, convictions, and punishments recorded on the police and prison *dossiers* of these, the conviction is forced home that mental warp, if not actual and active insanity, was sufficient to

account for their occasional or frequent breaches of the moral and criminal laws. The criminal authorities are reluctant to admit special pleas in excuse for, or in extenuation of crimes. That, for some reason or other, their training it may be, is not usually their line. To them a string of convictions conveys only one meaning—badness and incorrigibility. They are not altogether to be blamed. They do not have the necessary training or insight. Some knowledge of the work of Dr. Legrand du Saulle in his bureau at the Paris *correctionelle* might change their very pronounced views. This great medical jurist, after many years' service at the police *depôt* of Paris, declared that with a large proportion of the cases the magistrate had less to do than the physician, that, in short, their presence at the police office, the filter of first instance (the prison being the second), was due to causes with which the mere interpreter of police laws had no real concern. Into the cabinet of this medical expert there streamed, night after night, every type of physical and moral departure, the dipsomaniac, the imbecile, the epicure voluptuary, the "tête monté," the "vipere à la tête plat," the youth of the "beau monde" to whom nature had denied power of self-control, the attractive and refined female with hysterical hallucinations, etc. Many are put provisionally *en observation*, and the honour of a family, as well as of the individual, is preserved, the mental malady manifesting itself a few weeks afterwards in the asylum to which the quasi-offender was consigned. Many are sent right away to private or public asylums, without passing the portals of the gaol at all. From what I saw there many years ago I am satisfied that a somewhat similar procedure is required for this country, if madness as well as badness is to have due consideration.[1]

It is for the public and administrative bodies and individuals directly concerned with social order and good government to evolve a penal organisation which, without confounding the gaol with the hospital, can avail itself of the moral clinique as well as the police coercion required, and thus gradually eliminate from communities those elements which are unfit for its evolution and dangerous to society.

It may be appropriate to cite here a few cases from among

[1] In not a few cases in this country the hysterical and cataleptic states, the epileptic one *per se* or of alcoholic origin, and alcoholic neuritis are not recognised until sentence is passed.

many known to the writer in support of the contention that the misdeeds which to a trained mind conveys the idea of weak-mindedness, imbecility, moral insanity, epilepsy, catalepsy, paranoia, pyromania, dipsomania, general paralysis, obsessions, requiring special treatment appear to the guardians of public order simply as incorrigibility requiring penal treatment, repression, and seclusion.

(1) A. B—, æt. 46.—Record sheet bears that he has had many charges against him for petty theft and drunken and disorderly conduct, which he makes no effort to disprove. He wears an air of nonchalance, is unconcerned and uncomplaining, is rather well-pleased with himself, and is communicative; occasionally contradicts himself; pupils unequal and speech affected. The articles stolen, and found in his possession, consist of knives, forks, spoons, not worth many pence in value. The maximum sentence is repeatedly inflicted and accepted without protest, unless it be that in the columns of a society journal the more lenient attitude of the criminal law towards those who injure property is compared with those who injure the person. The bare record sets one athinking. The uncomplaining man is examined and found to be suffering from the first stage of general paralysis, and is at once relegated to an asylum.

(2) R. F—, æt. 30, has had several convictions with the maximum penalty of sixty days' imprisonment for assaults, restricted as to time (after dusk) and places (common stairs and public parks). On examination, it is found that he has the delusion that by Divine authority he has been entrusted with the duty of putting down immorality and unchastity committed in these two situations. He also goes to the asylum.

(3) F. G—, senile libidinist and exhibitionist, with enlarged prostate and bladder difficulties. He is proclaimed a sexual pervert, and not a criminal.

(4) S. G—, female, æt. 21, betrayed and deserted by her paramour (is seven months' *enceinte*), steals baby-linen and bedding, and is sent to gaol for theft. Examination reveals a state of hysteria and an irresistible desire created by the pregnant state similar to the instincts of birds and animals to provide for their offspring. The moral sense for the time being is affected.

(5) W. Y—, æt. 20.—Puny in size, insignificant in appearance, and presenting the stigmata of degeneration, became a constant frequenter of the theatre, and, from a prominent place, gives unstinted applause and throws bouquets at his favourite until he is removed and placed under arrest. This proved to be a case of *dementia præcox*.

(6) R. T—, a vagrant who begs his way, and who time and again receives the full penalty for sleeping out, forsooth, beside a brick-kiln. Verily, the birds of the air have their nests, and the beasts of the field their lairs, but this man, and many like him, have no place whereon to lay their heads, except an out-house, the guard-bed of a police office or prison cell, or the hot-water pipe on the floor of a night shelter.[1]

(7) S. T—, male inebriate, æt. 37. Was two years in Perth State Reformatory, and after a few weeks' freedom began his career of drunkenness and brawling in a provincial town, which made him a menace to his family and the police. The cost to the community of his conduct, apart from the nuisance, he failed to see, and began to point out the defects of the reformatory in question, especially the smallness of it, seeing there were thousands of inebriates in Glasgow and Dundee requiring such treatment. There was an inability to see the enormity of his own conduct for years in his desire that others might be benefited by internment.

(8) R. F—, æt. 18, gently reared and educated at the best secondary school, sets fire to a dormitory in order to ascertain how his fellow pupils felt being roasted. In other respects his conduct was shown to be precocious and impulsive. Being a case of impulsive insanity associated with early adolescence he very properly was sent to an asylum for a time.

The foregoing examples of degenerates, obsessionists, of sexual and alcoholic exhibitionists, and of the feeble-minded and mentally warped could be multiplied indefinitely.

They present minor and less striking phases of the degeneracy

[1] Within living memory in Glasgow these weary wayfarers in the night shelters there being no shake-downs, laid their chests across a taut rope which the keeper in the morning cut in order to wake them all up, as the gong does the guests at a hotel.

and mental disorders met with in asylums, and require, whether at large or in confinement, some part of the care, supervision, and treatment which are accorded to the major degenerates whom it has been found necessary to certify as fitted for detention in asylums. In these institutions may be seen paretic dements, paranoiacs, precocious dements, maniacs, imbeciles, terminal dements, etc., prone to, and who may have committed, arson; *folies circulaires*, hysterics, maniacs, moral imbeciles, and imbeciles prone to malicious mischief or criminal prankishness; erotics, senile dements, paretic dements, alcoholics, maniacs, epileptics, and imbeciles prone to indecent propensities, rape, sexual perversion, and the entire gamut of erotic besetments; general paralytics (first stage), imbeciles, kleptomaniacs, climacterics, prone to, and who may have fallen into the hands of the authorities for, theft; homicidal maniacs, epileptics, katatoniacs, paranoiacs, puerperals, alcoholics, and dipsomaniacs who may have committed crimes of blood, cruelty and violence before certification, or who by mere accident may not. These are the many points where criminality and lunacy touch, and it seems at present to be either the degree of the mental warp or its non-detection which decides whether the asylum or the gaol shall be the destiny of such.

CHAPTER VIII.

Penal Systems in Relation to Recidivism.

This in itself is a very wide subject, and as it assumes so many different forms in the same and different countries it is quite impossible to do more than touch the fringe of one or two of the main features as they bear on recidivism. Transportation no longer obtains except in the three European countries of Russia, France, and Portugal. Germany, strange to say, contemplates its adoption as part of its penal system. Imprisonment and penal servitude suffice for most civilised nations. In some of the States of the American Union "indeterminate sentences" are in operation for young felons from sixteen to thirty, and are carried out in the reformatories of Elmira, Concord, and Pennsylvania. There is this proviso attached to it,

that the sentence shall not exceed in duration the maximum sentence possible under the law for the specific crime committed. These have rightly engaged the attention of thoughtful reformers in other lands. A beginning has been made in this direction in England at Borstal and Lincoln prisons, set apart for juvenile felons up to twenty years. But whether the sentence be "determinate" as it is in every other country, or "indeterminate" there are several considerations in penal discipline which bear on the criminal and on the problem of recidivism. These are, in the order of their importance, cellular or associated confinement and the duration of solitary cellular confinement, hygiene, discipline, industry, and diet in relation both to the task set and to the daily sustenance of the ratepayers taxed to maintain prisons and reformatories. It is assumed that in every country the diet is sufficient to maintain health and to enable the prisoner to perform his task. In some of the United States prisons the *menu* is more like that provided for an epicurean, being rich, varied, and more expensive than the food of a large section of the sober, honest, and industrious taxpayers. This should not be. It is calculated to attract rather than repel the recidivists, and puts a premium on crimes and offences.

That penal systems past and present have much to do with the vitality of recidivism is not seriously disputed. For a century and more prison and social evolution has been proceeding in the right direction and on right lines, in some countries more rapidly than others. Each generation has produced its reformers, taking up the problem where their predecessors left it, and it would seem now as if we are nearing the final lap when that evolution will have reached its culminating point. Prison reform, which is indissolubly woven with social reform, has had at all times many advocates in the legislature, in departmental administrations, in the press, and in works of fiction. Quite recently an eminent fiction writer conversant with the problem, but not with human nature on its erring side, produced a scheme for present day uses in which excellent elements are strangely blended with discarded ones. An outline of his panacea is as follows: A modern statesman with the capacity and dynamic will of a Napoleon, and with fewer of his scruples, has arisen. The honest working and industrial classes are to be freed from the perpetual and ever-growing burdens of prisons, workhouses, asylums, and reforma-

tories, by the establishment of a paying penal colony in the hinterland of Cornwall. The idea is excellent. The army of "unfits," "unemployables," and "incorrigibles" in society, after a sifting trial, in which it must be said full justice is to be done them by competent judges, are to be sent there, and, like the ancient Athenian under the decrees of Atimia, deprived of all civil rights. The evidence of unfitness for freedom and civic rights, like the object in view, leaves nothing to be desired. A military martinet was to rule the place, and the "perpetual slaves"—the term is ominous and bad—were to be compelled to work the disused tin mines to profit. The voice of humanity is not heard in this hinterland. There is no pretence of that. The clanging of chains, the click of rifles, the shooting of bolts, the suppressed moans from the "triangle"-room, alone break the silence and monotony. The turnkeys (*guichetier*) of the Paris prisons of the Revolution with his bull-dogs, and the felon-tamers of some of the prisons of the Western States of the American Union in the third decade of last century were to be revived in a measure. Like all such experiments made in this and other countries with the prospect of being self-supporting and something more, this one ends in mutiny and disaster. There can be no retracing of this track. The plan has been tried again and again in the past, in the hulks, galleys, and bridewells, and failed. Even here, with the mental flaws and stigmata of heredity and degeneracy on all sides, or the acquired flaws of vice and disease, the victims of soulless oppression combined to purpose, as political prisoners have frequently done in Siberia and elsewhere. The plan failed to recognise the fact that a large number of criminals and delinquents who are feeble-minded and mentally warped are either the pliable creatures of circumstances or the variations or "sports" of nature.

Great Britain and Ireland.

A better knowledge of, and a pardonable belief in the penal systems and the criminal laws of one's own country, and of the evolutions both have passed through, will be sufficient justification for briefly dealing first with it, next with the Anglo-Saxon experiments in the United States, and last, of Continental methods.

Within a century, without going further back, one may learn

the story of legal and penal evolution in Great Britain and Ireland, in which the prevention of crime, like the estimates of criminals themselves, and the springs of crime in relation to society, have undergone frequent and important changes all for the better, and suggestive of truer conceptions of all three—conceptions destined ere long to bring about happier and better results.

Towards the close of the eighteenth century Howard's monumental work to bring about judicial and penal reform was beginning to tell. The doctrines of Paley and his followers, who multiplied capital felonies until 220 stood on the Statute Book, were passing away. Philosophers and jurists, following the lead of Montesqieu[1] and Beccaria,[2] not without cause denounced our criminal laws and our penal system with their many barbarities. Jeremy Bentham, with his strong belief "in the greatest good to the greatest number," was the leader of this school, and contested the doctrine of Paley that the security of society, secured by sanguinary laws, was the paramount object, punishment fitting neither the crime nor the criminal, but the facility of its commission and the difficulty of detection. At this time the hulks, bridewells, and county gaols were forcing hot-beds of abominations, fevers, disease and unspeakable cruelties. Judges and magistrates discreetly, in the course of official duty, inspected them from the *outside*. There was no thought of isolation, separation, or reformation. Detention and security were all that was looked for. The idea of the punishment fitting the crime, not to speak of the criminal, had not taken hold of the legal or public mind. All were herded together, convicted and unconvicted, and debtors, irrespective of age, sex, or crime, the silly and crazy inmates, of which there were many in those days, affording sport for the sane miscreants. Alike for the insane and the criminal these were the dark ages.

The beginning of the nineteenth century, when banishment, the hulks and gaols in which felons were herded together, and fettered at the will of the gaoler, were considered by the ruling classes as the panaceas for criminality—the *first* epoch—brought into being strenuous reformers, such as Blackstone, Romilly, Fowell Buxton, Elizabeth Fry, Wilberforce, and Mackintosh.

[1] *Esprit. des lois.*

[2] *Dei Delitti e delle pene.*

They led a successful crusade against the penal system and the congeries of capital felonies on the Statute Book, Romilly rightly contending that a merciless code was provocative of crime.

The idea of Beccaria and Paley was that the sole function of the law was the protection of society by the punishment of crime, regardless of the fact that society, as then constituted, and to a less extent now, is a part sharer in those crimes, and will continue so long as ignorance, idleness, slum-dwellings, and intemperance are permitted to continue.

The Benthamite philosophy was but a development of the Beccarian, and the theory of punishment passed through three stages, selfishness being the guiding principle: first, the selfishness of a minority; second, the selfishness of a majority, and third, the catholic selfishness of the whole.

The philanthropic school now in the ascendancy, which held that the chief object of the State is to prevent crime, and that the reformation of the criminal is the best way to accomplish this, punishment to bear a part in the reformatory treatment, but not one whit more to be applied than was absolutely necessary. For this view there is much to be said.

Lord Eldon (John Scott), a famous Scotsman, and a still more famous lawyer, who entered the arena as an opponent of penal reform, retarded for a time needful and urgent reforms, but about 1820 the era of cold obstruction's apathy and Eldonite obstinacy was drawing to a close. Equally great minds and hearts were working in an opposite direction. Henry Brougham, whose famous speech "on the present state of the law" took six hours for its delivery, Robert Peel, and Mill, Bentham's greatest disciple, were untiring in their efforts for reform. Many of the dreadful evils, more like those of Moroccan Kasbas of the present day, the weight and cruelty of fetters which are now only visible in museums and in exhibitions of torture appliances, varied directly as the insecurity of the prisons. There were one or two exceptions in Gloucester and Sussex in which the separate cellular system was tried, on the initiative of the Duke of Richmond, whose house for generations had produced penal reformers. As the outcome of these experiments, promiscuous herding was to give way to separation and classification, as far as these could be carried out in the separate cells available, in separate boxes in chapels with masks, and in separate airing yards.

Mill considered *industry* carried on under the separate or silent system as the great reforming agency; Sydney Smith *deterrence by punishment;* and Elizabeth Fry, *industry with religion tacked on.* To Sydney Smith industry was like a red rag to a bull. Peel's well-known Gaol Act of 1823, laid great stress on "hard labour," and the corrective potency of the "walking wheel" or "everlasting staircase," as the felons termed it, a day's work on the wheel producing nothing in the way of results, being equal to a double ascent of Ben Nevis.

Under the "silent" system convicts slept in separate cells, but worked and fed together, not a word of speech being allowed. In 1835 the Duke of Richmond passed a Bill, the two main provisions of which were, uniformity of discipline, and the appointment of five Government inspectors, whose duty it was to devise something different from the cruel austerity in force in some prisons, and the extreme laxity in others. But it was not until 1842—the *second* epoch—that the separate or cellular system had a fair chance, Pentonville being the model for England and Perth Penitentiary for Scotland. The advocates of *encellulement* believed in the reforming potency of solitude. The objections put forward were—the cost, the lowering of physical and mental health, and the failure to reform. As "cellular" prisons were much more costly than the "congregate," Carlyle fulminated from his Olympus at Chelsea, and declared that the "diabolic *canaille*" should be dropped over London Bridge into the Thames sludge. In 1847 Earl Grey and his Ministry, acting upon the report of Lord Brougham's Committee, accepted the "separate" system as the most efficacious method of discipline, imprisonment being the first stage of reformation; a probationary period of association in the public works at home the second; and shipment to the Colonies on tickets-of-leave the third.

In 1850 Directors of Convict Prisons were appointed with excellent results.

In 1859 the hulks in England and at Gibraltar were abandoned.

The "silent" system found a notable opponent in Captain Maconochie, R.N., who preferred the "mark" system, which he had worked so successfully in the Australian penal settlements.

Instead of a "time," it inflicted a "labour" sentence, in order to earn back freedom, restraints being gradually relaxed as conduct improved and power of self-control increased. There is a good deal to be said in favour of the "mark" system, but its chances of success were better in Australia, in which at the time honest industry of such a profitable kind awaited convicts on discharge as to make crime a bad speculation; and, moreover, all the females and many of the males were ultimately absorbed into the free population.

In 1850 discussions in Parliament and in the press were hostile to the separate system, as carried out, and the public failed to see the difference between methods of true kindness and those of indulgence. Mr. Pearson, M.P., advocated at this time a "labour and appetite" proposal, his main planks being industry, food, and the "mark" system. The municipal mind of the day, strongly reliant on common sense, the treadmill, and the crank, as strongly believed in the deterrence of penal grinding in the solitary cell, the only companion of the felon being his crank-handle, a *primum mobile*, no greater than a rush of water or a puff of steam.

1853 witnessed the passing of the first Penal Servitude Act, which inflicted shorter sentences of penal servitude for transportation. It failed of its purpose, and in 1857 a second Act was passed, in which a large remission of sentence was made the reward of industry and good conduct. In this year the "separate" system was in force in 120, or a third, of the English prisons.

But the criminal and penal problem, in spite of all the plans put forward from time to time to cope with it, no doubt more rational and humane as the years passed on and as experience was gained, was still unsolved when the Prisons Act of 1877, the splendid work of Sir Richard Assheton Cross, the Home Secretary (now Lord Cross), became law.

This may be termed the *third* reform epoch. It was a veritable Magna Charta for the prisoner quite irrespective of the benefits to society and the taxpayer. By this act the control of prisons was removed from a variety of local authorities and placed under the control of Prison Commissions responsible to Parliament and to Secretaries of State for Home Affairs. A local or provincial system made way for a national system. A uniform system of discipline was introduced, and scores of

prisons were closed with benefit to the ratepayers and to prisoners. The benefits of centralisation and nationalisation and of the better government and control of the prisons, although resisted at the time, are now fully acknowledged. The good work done by the English Prison Commission has been already referred to. It remains to be said that in the matter of discipline, hygiene, diet, the staffing of the prisons by an intelligent and superior class of officers, and justice to prisoners the Scottish Prison Commission [1] has at least as excellent a record. The staffs are, as a rule, adequately remunerated, and in addition to security of office, never enjoyed prior to 1877, can look forward to a pension. The complaints of prisoners as to treatment are investigated by an independent body, the Prison Commissions, who are assisted in the work by Visiting Committees appointed by burghal and county authorities. The benefits to the central administrative authority of the co-operation of local authorities are fully recognised. It remains to be said that cranks and tread-wheels were dispensed with in Scotland several years before they were discontinued in England.

The country is now on the threshold of the *fourth* epoch when Ministers of State concerned with Home Affairs, the executive officers of the law, judges of eminence, psychiaters, prison administrators, magistrates, and social reformers have come to recognise that much still remains to be done in justice to the criminals and offenders themselves as well as to society. This may be termed the turn of legal, medical, and sociological psychologists, who are looking at the question in all its bearings, from new points of view, and approaching it with confidence. Every penal reformer is nowadays more or less of a psychologist. Except for the "professional" and "incorrigible" criminals, most prisons might well be turned into labour settlements, labour colonies, industrial reformatories, and inebriate retreats. The lines of reform proposed, embracing an extended classification, would begin roughly here, further classification of young and old, of first criminals and offenders, and of "repeaters," regard being had to the usual nature of their crimes and offences, following after the first sorting had taken place. Each repeater would be phy-

[1] Three names are pre-eminent in this connection, those of Mr. Beatson Bell, advocate, the first, and for twenty-one years *Chairman*; Colonel A. B. McHardy, C.B., its present *Chairman*; and Mr. William Donaldson, C.B., the late *Secretary*.

sically and psychologically analysed with care in order to detect physical or mental stigmata, traceable either to heredity, vice and degeneracy, or environment, or to all three. Twenty-two out of every twenty-four hours lived by prisoners in silence and solitude for long periods, it is hoped, will be a thing of the past, as everything so unnatural ought to be. The room or apartment will, by its construction and furnishings, be more humanising. Associated labour with safeguards, and the safe exercise of the faculty of speech would be allowed. Works of an industrial and educative kind would be engaged in and taught.[1] Education of a thorough-going kind could not fail to be a feature of the penal evolution, which, profiting by the past, it is believed would bring us as near the *ne plus ultra* as possible. Its advent will be hastened by legislation of a social kind, bearing chiefly on intemperance, slum dwellings, and the prevention of juvenile delinquency. The separate sleeping apartments, unless for medical or special reasons, would continue. To it the recidivists and long-term prisoners could retire daily for two or three hours for meditation, light work, and reading.

"Indeterminate" sentences, it is expected, will shortly be grafted on our statutes as well as the provision of a different mode of supervision and guardianship on absolute or conditional liberation. The revival of something approaching Sir Walter Crofton's experiments in Ireland of "intermediate prisons" and individualisation of prisoners would, with modifications, be good policy. Although it failed in Ireland, for reasons not fully understood, it contained the germ of a sound penal policy. Isolation in two cellular prisons there formed the first stage of discipline. With a good conduct and industry sheet, the convict moved on to a public works' prison. There he passed through three grades, each remove bringing a change of garb and increasing rewards. The most important feature in the grading was the gradual relaxation of restraint, and the right to self-government was thus restored by degrees. The "intermediate" prison acted as a moral sieve, retaining the bad and letting the

[1] Trades Unions need not fear competition with prison labour. It is safe to say that after deducting the sick and infirm, the cleaners, garden and field workers, laundry and cookhouse workers, and those engaged in dressmaking, bootmaking, and clothing for the service, not 1,500 out of a daily population of 2,880 would, in Scotland, be found at any time competing with the free labour of tens ofthousands.

good pass through. The remissible portion of the sentence and other inducements provided the necessary stimuli, and the discipline was thus worked with a strong motive power. In the two "intermediate" prisons, one with a farm and the other with a factory attached, there was the smallest amount of supervision, and the convicts, surrounded by many of the temptations of ordinary life, found themselves with hardly a vestige of the moral "go-cart" left to lean upon.

United States.

Fourteen years ago the writer made a visitation of inebriate retreats, asylums, workhouses, reformatories, and prisons in the United States and Canada. Among the prisons visited were those of Elmira, the New York State Reformatory, The Tombs, and Blackwell Island Penitentiary (New York), Sing-sing, Baltimore, Philadelphia, Chicago, Boston, and Massachusetts. In the United States there are only four government or federal prisons; the others are either under the different states or municipal management, the result being that two prison systems of the most opposite character were in full swing, the "separate" and the "congregate," each having the strenuous advocacy of its managers as well as of its patrons, who seemed to have a good time on the whole. In American prisons there was much to learn and much to avoid. The state prison of Auburn, New York State, which is a good type of a "congregate" prison, was the famous prison which seventy years ago produced the felon tamers or wardens who dispensed with high walls, *chevaux-de-frise*, and bars and bolts, the cowhide thong and the rifle taking the place of these.

The "congregate" prison with its extensive and well-equipped workshops suggests a factory as much, or even more than, a prison. Cherry Hill Penitentiary, Philadelphia, is probably the best type of the "separate" system, and resembles our own. Attached to some prisons are large farms, stone quarries, and brick works. The "doubling up" and indiscriminate association day and night, especially at night, is rightly considered bad policy in this country. One thing which should be insisted upon if a modification of the "separate" system during the day and during work is meditated in this country, is that the privacy of a separate sleeping apartment will continue. The principal features of United States prisons and

reformatories differing from British are the workshops, which give one the idea of a factory, the large farms attached to many, the legal "eight hours shift" for the warders, the use of tobacco for chewing (not in the reformatories for young felons), the many opportunities for conversation, the instrumental band in the chapel, the prison newspaper, edited and printed by prisoners, dining *en masse*, the cells made of steel twice the thickness of boiler plate, armed sentries with repeating rifles, walls thirty-five feet high and fourteen broad at the base, the *female* certified nurse in charge of a male hospital assisted by male prison orderlies, ablutions before meals, the all but entire absence of denominationalism in the services, the cell furniture, the diet, and the mode of employment. The last two call for some remarks. The cell furniture allowed to well-conducted and industrious prisoners, unlike ours, consists of a cupboard, table, small mirror, photographs of relations, pictures, engravings, drapery, cage birds, etc. The *menu* is certainly very different from ours, and looks very tempting, and may well explain the return of their own accord of several prisoners on parole. But an ordinary dinner of five courses—mutton broth, roast mutton, stewed potatoes and buttered parsnips, rice pudding, coffee and bread—is enough to make the teeth of a British autolycus to water. With regard to employment, Colonel McHardy, the Chairman of the Scottish Prison Commission, who visited thirty-two of these institutions in 1902, informed me of the two systems in operation, that of the "contract" and of the "state account" for the state or city, and spoke of its importance in treatment. By the former an agreement is made with contractors to supply them with prisoners at a fixed price per head to manufacture articles of which the contractors are merchants. The State provides the prisoners and the workshops or factories, and the contractor provides the whole suite of machinery and the raw material, as well as instructors competent to teach the prisoners. To the head of the Scottish prison administration the result of this system seemed "excellent and infinitely better than a system of idleness," and in this view most penologists will be disposed to agree. For extra work the prisoner is paid money, which goes to his credit, and the financial results are remarkable, Baltimore gaol not only being self-supporting, but having a balance to the good of nearly £3,000. The provision

of work by the State affords a solution of the difficulties of dealing with a managing contractor provided a sufficient supply of orders can be obtained for the various public departments to keep the prisoners busy. In most prisons the prisoner is somewhat of a profit sharer, and he is allowed to send money to his relations, or even to subscribe when a prisoner without funds is being liberated. This should tend to industrial effort and to better feelings. Originally, in all the prisons work was looked upon as an essential, but this has, remarks Colonel McHardy, "remained the dogma in a few"; the voice of the trade unions has been so strong as materially to check labour in others. One remarkable feature is the number of visitors who are allowed to inspect these institutions. Two hundred in a day when excursion trains are running to the gaol town, as much as a quarter of a dollar being charged for admission! This reminds one of Jeremy Bentham's economic and beneficial plan of a hundred years ago, to erect a panopticon prison with a central argus chamber for the prison officers, a combination of reflectors to keep the prisoners under continual inspection, and the admission of the general public on the principle that thieves *in posse* might take warning by contemplating the plight of thieves *in esse*.

Uniformity, under one controlling and administrative authority, exists in Great Britain. From what I saw, it would appear that in the United States flourishing side by side are two kinds of prisons and two systems of prison discipline diametrically opposed to one another. In addition to the prisons to which reference has been made there are the five adult reformatories of recent growth, of which Elmira is probably the oldest and best example. The governing principle of these is a repudiation of the doctrine of the "punishment fitting the crime," and the adoption of "indeterminate sentence," under which the length of sentence is not pronounced, nor its duration fixed, except by the condition that the individual cannot be kept in custody longer than the maximum sentence allowed by the law for the particular crime committed. This principle is now partially embodied in an Act for England and Scotland, by which imprisonment prisoners of two years and under may, like convicts, get a proportionate remission of sentence if reported industrious and well-behaved.[1]

[1] Among a new set of prison rules approved by the Home Secretary with respect

There is, further, a trade school, so complete that each prisoner may learn and practise the occupation best suited for him to follow on release, a school of letters covering instruction from the kindergarten to the academic grade, together with courses of lectures on natural science, historical, economic, and ethical questions, followed by a free discussion in which prisoners have put to professors of ethics and political economy hard nuts to crack; military organisation and drill, physical culture and well-appointed gymnasia with baths, swimming-baths, and massage appliances to compensate asymmetries and physical defects; music, vocal and instrumental to refine and quicken susceptibilities. One may ask, is all this necessary? In the reformatories for the youthful and more hopeful felons there are three grades. The first dine by themselves, can order their own *menu*, and have additional furniture in their rooms. All the three grades work together, and there is in consequence a great deal of association. Before final discharge the individual is handed over while on *parole* to a suitable and selected guardian, and upon his report depends absolute liberation. Eighty *per cent.*, it is claimed, have been reformed, but independent observers consider the figure much too high. Half of it or less would be good work, and welcomed in this country. All this is achieved within two years' time.

France.

France has 500 prisons and a daily population of 50,000. These figures might imply double the criminality of Great Britain and Ireland, but it would be an incorrect inference. Its penal code speaks of (1) "contraventions," the pettiest offences met by a week in prison or fine; (2) "delits" for imprisonments exceeding a week and under five years; and (3) "crimes."

By this arrangement the title given to the offence or crime is regulated by the sentence. That the arrangement is not satisfactory may be judged by the "delits," which would cover almost anything, and certainly some of the worst crimes known in this country.

In this country there is no uniform system, both cellular

to remission and punishments it is provided that a prisoner convicted for a period exceeding a calendar month and up to six months can now, by industry and good conduct, earn a remission not exceeding one sixth, and a good deal more remission can be earned by those with sentences over six and up to eighteen months.

and associated confinement being recognised. Of the former Paris has its Mazas and La Santé, *travaux forcés*. The evils of association are said to be minimised by classification, and as almost all the associated prisons have separate cells these are used for the worst (the *relegués*), and for the best prisoners. In the larger prisons many and varied industries are carried on, and many are employed in making toys, puzzles bon-bon boxes, hosiery and cabinet-making.

In the Corsican settlements reclamation of land, clearing of forests, cultivation of the orange, the vine, the olive, and mulberry trees for the silk-worm, are engaged in. After deportation was abandoned by this country, France, in 1851, began it to New Caledonia and Guiana, and still clings to it. Although still pursued by the French criminal authorities the hope is not entertained that either of these penal settlements will become a prosperous colony as was the case with Tasmania and Australia. Juvenile delinquency has, as might be expected, received considerable attention at the hands of the French authorities. Two kinds of institutions exist, the first, punitive or correctional, the second, simply reformatory. To the first are sent all youths convicted of offences committed with *full knowledge* of their criminality, and those relegated from the reformatories as insubordinate ; to the second, children not responsible for their acts, and ill-behaved children whose parents or guardians are unable to manage them. For boys there is the La Petite Roquette, Paris, as an example.

In France it is alleged that serious crime, such as murder, parricide, poisoning, in spite of strict cellular confinement and banishment, has increased at an alarming rate. These crimes would not be considered the measure of Britain's criminality. That is measured by crimes against property and against the person to obtain property. In 1897 Alfred Fouillée wrote : " Crime has trebled in the last fifty years in France, although the population has hardly increased." Before accepting this one would like to know what is meant by " crimes." French statistics, like British, have got to be carefully analysed before they can be seen in their true setting and anything like their true value realised. *À propos* of this the *Spectator*,[1] commenting upon crime statistics, very truly remarks : " It is unfortunate that statistics cannot be compared on their face value ; they

[1] February 8th, 1908.

are misleading without reference to the conditions under which they were compiled, and that reference opens up a vast field for the play of bias and preconception."

The "Loi Berenger," providing for arrests of judgment when extenuating circumstances can be pleaded, remission of "penalties" in the case of minors who appear to be reclaimable, and suspension of sentences in cases of good behaviour, anticipated our First Offenders Act and the Probation of Offenders Act by several years.

Spain.

In the Saladero, Madrid, association in prison and at labour is the rule, and the discipline is lax, especially in the præsidios at Carthagena and Granada, where a system much like what was in vogue in this country sixty years ago may be seen. The discipline in force is not deserving of the name, at least in the Granada prison visited by the writer in 1903. Prisoners convicted of grave crimes are deported to the Balearics and the penal settlements at Ceuta and Melilla.

Italy.

In a country rich in criminal anthropologists and jurists, the penal system is better than in most European states. In the ordinary prisons a gradual amelioration of condition is secured by good conduct; in the *bagnios*, or hard-labour prisons, in addition to exemption from fetters, convicts may gain the privilege of completing the last half of their sentence in one or other of the agricultural colonies on the Tuscan Islands, or in the intermediate prison on the island of Capri, in which a state of semi-liberty exists. This plan was in vogue forty years ago in Irish prisons, under Sir Walter Crofton. Why it failed there it is difficult to understand. The principle underlying it was sound. It is claimed that in Italy associated convict labour has given good results. In the prisons or penitentiaries the labour is industrial and contractors have control of it.

Russia.

Crimes for the most part in Russia are political, for which 50,000 are yearly exiled to the penal settlements of Siberia.

These crimes are a protest against despotism, rapacity, and oppression of the worst kind. Crimes against property are bound to increase in Russia while there remains such a gulf between the ruling classes, few in number, the professional classes, also few in number but in sympathy with the third, which comprise the multitude who are uneducated and have no real political rights at present. In the cities of Russia drunkenness and disorder, due to the drinking of impure vodka among the poorest, prevail, and in this respect their condition resembles the seamy side of social life witnessed in British cities and towns. The Mujak and Ostiak of Russia are objects of commiseration.

Portugal.

At Lisbon, Coimbra, and Santarem, there are cellular prisons, and the system of strict separation for years when first adopted in 1884, was expected to reform and deter. The anticipations have proved as illusory as the benefits of deportation, for the *relegués* to the penal colonies on the West Coast of Africa. In prisons on the associated plan the discipline is lax, and little good results.

Switzerland.

From the Swiss there is much to be learned in regard to the methods of dealing with vagrants, inebriates, and recidivists. The prisoner passes through three stages: first, isolation; second, employment in association; and third, comparative freedom. The labour is chiefly industrial, but there is a form of penal labour, which includes street-cleansing, road-making, and dykeing the rivers, carried on, not by contractors, but by the prison administration itself. Each recidivist or inebriate, on discharge, is provided by societies with a patron, personal sympathy and interest being considered of more value than mere money, which is the easiest way to many of ridding themselves of responsibility, and this personal relationship begins before he or she has left the prison. The patron sees that his *protégé* is placed in a new environment removed from harmful influences. The surveillance, as might be guessed, is quite different from that of the police, and resembles that in operation in connection with our First

Offenders Act. The results are said to be very satisfactory. The penitentiary system of Switzerland is well thought out. At first there is cellular confinement, then there is progressive life in common, and finally conditional liberation.

With the vagrant class Switzerland has better methods and better success than most continental countries. The colonies are mostly compulsory, only three being of the voluntary type and managed by philanthropic societies, but those who gain admission require to rest for one or two months. Nearly every canton has a compulsory colony managed by the cantonal council. The vagrant is liable to imprisonment for a period of from two to six months, or to detention in a forced labour colony for a minimum term of two months and a maximum of two years. These colonies are small, as a rule never exceeding two hundred inmates. The farms are worked economically, and from the workshops articles of commerce are turned out. The result is that begging and vagrancy have greatly diminished, and the success of the colonies from the economical and reformatory points of view has been gratifying.

Belgium.

In this country absolute separation, no matter what the length of sentence, prevails. It is carried to the chapel and the triangular airing yard. In support of the system its advocates claim two things, first, that the prisoner lives in association with the prison staff, and second, that there has been a steady diminution of crime. The first is a fiction, no matter what its advocates in Belgium and this country may say, and the second might have occurred under a different penal *régime* in a country as prosperous as Belgium. Although cellular or solitary imprisonment has received the closest attention in Belgium, a new school has arisen which dissents from this hitherto accepted principle, directing attention to the mental and physical wreckage resulting.

Holland.

Cellular or separate confinement is restricted to *two* years in prisons worked upon this system. But in other prisons association is allowed. The labour in both is industrious, not penal, and a variety of handicrafts is carried out under con-

tractors. Trades are taught to those undergoing long sentences Properly trained in school, and to manual labour after leaving school, this would not have been necessary, but the chances are if the offender had been equipped for life's work he would not have been under restraint.

CHAPTER IX.

Prophylaxis or Prevention.

The prophylaxis or prevention, both of crimes and offences, is a matter quite independent of, and takes precedence of, juridical and penal reform, for it is rightly assumed that *first*, all juvenile, *second*, most juvenile adults, and *third*, some adult criminals and offenders may by means of the social reforms sketched, escape or be detached from careers of wrong-doing, and become industrious and respectable members of the community.

It will be admitted that for the three classes, healthy decent homes are an absolute necessity. This connotes a summary ending of rookeries and slumdom, and that provision both by municipalities and by private philanthropic enterprise, which for some years has been successfully in evidence in large cities, of plain sanitary dwellings amid healthy environments exposed to light and air, and that publicity which no honest law-abiding citizen fears. In the slums material as well as moral hygiene and race efficiency have not had much chance. The sudden transference from darkness to light, from squalor and indecency to comfort and sanitation, may, to begin with, be too much for the submerged twentieth, and there might be the risk of property deterioration unless something is done to educate them to the duties and obligations of the new situation. Obviously this education can best be secured by the appointment of competent and tactful visitors of the volunteer and remunerated class, who would give instruction in ventilation, cleanliness, ablutions, cooking, and domestic order. Unless this is seen to, relapses, in many cases, may be

looked for. By some such step as this, unfortunate young children will in reality have the "chance" in life that everybody at present is talking about. For the safeguarding of the health, habits, and morals of the children thus handicapped, legislative interference is needed to secure that, on proof of the unfitness of parents or guardians, removal to proper care can be effected by the supervising authority. The blemishes calling for action would be an immoral atmosphere, habitual drunkenness, cruelty, neglected education, and idleness, or employment after school life is ended of a kind not calculated to be helpful and self-supporting in adult life.

When all this is done it will be found that by reason of physical or mental defect, or both, that a proportion cannot stand alone. For them guardianship and helpful visitation is required, just as guardians and probation officers are for habitual offenders and criminals who can no longer be considered juveniles.

Dr. H. B. Donkin,[1] speaking with the authority of a hospital physician and of a prison administrator, pointed out that a good many of the mentally defective school-children are likely, following the path of least resistance, to drift into delinquency and crime, and that among criminals a large proportion are found to be congenitally feeble-minded, and that among minor offenders in local prisons the proportion of prisoners of weak mind was from 10 to 15 *per cent.* The relation of heredity to crime is, he adds, simply through mental defect, and a readiness to succumb to environment.

It has been asserted by a few able writers that all crime is more or less of a disease; by the vast majority of observers this is not admitted. It is a view which has alarmed the public mind. Jules Morel, Chief Physician to the State Insane Asylum, Mons, Belgium, holds that the "incorrigible" does belong to the domain of pathology. There is much to be said for this view. Verily, our prison population contains a considerable proportion of pathological products. Critics of the doctrine that all crime is more or less of a disease contend that it is one based on the assumption that mental and physical degeneration is invariably the cause, and not the effect, of crime and vice. The truth is, it occurs both ways. But what, it may be asked

[1] Dr. Donkin, Prison Commissioner on the "Feeble-minded Criminal," at the conference of the After-care Committee of the Birmingham Education Authority.

in the light of treatment, does it matter? The distinction is unimportant. Both products have to be specially dealt with in any penological system, perhaps with this reservation, that the genetous specimens being in no way to blame, might receive a little more consideration. In the ætiology of insanity just as with the inmates of asylums, heredity and acquired mental states are met with, some of the acquired traceable to vice, yet in regard to treatment no difference is made.

But all this, on behalf of the three classes, entailing cost, labour, and anxiety, will be fruitless and Sisyphian, unless the legislative axe is laid at the root of the two upas trees of slumdom and intemperance with the concomitant evils of ignorance, poverty, and parasitism. This is the great sociological factor of the recidivist problem, and of vastly greater moment than the juridical and penal reforms to be alluded to.

Among the prophylactic and remedial measures put forward by mistaken race enthusiasts and social therapeutists is the Spartan-like one of sterilisation of the "unfit" among recidivists, degenerates, imbeciles, and sexual perverts. The writer has no place for it, and there is not the remotest chance of a British legislature entertaining or sanctioning such a proposal, and if there was, it is doubtful if qualified public mutilators could be found. The suggestion may be set aside as not only impracticable but not calculated to serve the end in view—the mental and physical well-being of the race. Before society decrees this kind of surgery, if ever it does, it must have clean hands itself, if social sepsis is not to follow. Medical certificates of fitness for wedlock are equally absurd. Much, however, may be done for eugenics by educating the people in these matters.

It is felt by the votaries of natural selection that this law is greatly interfered with by the humanitarianism of the age. Of such critics and observers Bernard Shaw is the high priest, and he puts the case forcibly, if laconically, thus: "Being cowards we defeat natural selection under the cover of philanthropy; being sluggards we neglect artificial selection under cover of delicacy and morality," and the two remedies of sterilisation of the "unfit" and "State controlled marriage bureaus," with its staffs of medical and legal directors, are put forward to improve the race and to prevent degeneracy. As to the first, if it means isolation, good and well, if it spells mutilation it is not likely to

be entertained; as to the second, it is something in the nature of a Utopian dream, because while it might prevent undesirable unions that now take place, it would not prevent the production of a degenerate offspring by couples who failed to get the marriage bureau permit. It would be as reasonable, and no less ridiculous, to give the marriage bureau power to compel marriages of the certified fit, or alternately to tax "fit" spinsters and bachelors who fail to contribute to race efficiency.

No doubt it is a simple and speedy remedy to put the habitual criminal and delinquent "on the list" as persons "who would not be missed," but preferable is the transplanting or segregation of such anachronisms—beings out of time and place—and the adoption of the wise and gentle constructive eugenic proposals of Galton. Listing them for lethal or mutilating chambers is not the way which either justice or humanity points.

Discussing this question, Sir Arthur Mitchell, K.C.B.,[1] put the case against the "natural selection" advocates with force and lucidity. Writing from a wide knowledge and experience, he points out that considerable "variations" of the degenerate type are met with in animals even when artificial selection is followed, instancing sheep, and the annual crop of "sholts" or weaklings; and in humans following what any "marriage bureau," if it existed, would call healthy marriages. This, he says, is the unexplained law of nature at present. It will be admitted, of course, that the union of "unfit," and these are very few when wedlocks, as a whole, are looked at, must eventuate in a much larger production of variations of the subnormal type, even if these in the aggregate, as is the case, are few compared with the variations met with in the families issuing from healthy wedlock. In this connection the writer may refer to the views regarding imbeciles and feeble-minded persons he submitted to the Royal Commission on the Care and Control of the Feeble-minded.[2] After demonstrating by numerous examples the close intimacy existing between, on the one hand, imbecility and feeble-mindedness, and, on the other, illegitimacy, and the presence of both in two or three generations living under one roof, it was suggested by one of the Commissioners that if such mothers—for the *faux pas* requires to be

[1] Science article in *Scotsman*, December, 1907.

[2] Sitting in Edinburgh, June, 1906.

made before public interference could well take place—were put under control and supervision, the production of imbeciles would to a large extent cease. So far as the begetting of imbeciles in this way is concerned no doubt it would, but as imbecile "variations" appear not unfrequently among the offspring of, to all appearances, healthy marriages, and these are the vast majority of marriages, and as illegitimacy is, in Scotland, only 6·7 *per cent.* of the birth-rate, and the imbecile illegitimate only a fraction of this, it follows that, as the law of nature or natural selection stands, imbecile and weak-minded variations may, for some unexplained reason, be expected. Male imbeciles are not, and the feeble-minded males are only to a small extent, offenders in this respect. As a rule the male weaklings are denied the procreation of their kind. But whatever the fecundity of female "unfits," as a rule, the physically and mentally weak offspring in urban areas die off in spite of humanitarianism.

Something can be done effectively to check the procreative proclivities of feeble-minded women who rear a brood of illegitimates, some of whom are imbeciles or "soft," and the females among them in turn perpetuate the evil so that it is no uncommon experience to find three such generations under the same roof. The evil referred to, in so far as it is not due to mental weakness, is attributable to life in an atmosphere inimical to chastity and decency.

Before the drastic remedy of sterilisation is entertained society would first require to know the effect upon such of better housing, better sanitary conditions, compulsory seclusion in inebriate retreats and reformatories and labour colonies, and of better methods than those at present in operation, not only to keep in check but to terminate a scandalous state of society. Many of the other obsessionists referred to do little harm in the way of perpetuating their kind. Their habits and their mode of living are inimical to life and to lineal succession. But nowhere is the argument weaker as to the transmission of hereditary or acquired defects than it is in regard to the vast majority of "professional" criminals who live by crime, and in spite of the risk of lengthened loss of liberty make a good thing of it, the "swag," often considerable, enabling them to indulge in luxury, idleness, and debauchery. They do not lack brains or intelligence. Of these they have more than their share, but it is put

to a bad use. In the case of such "professionals," by wiping out the rookeries and haunts in which they are hid away, by compelling able-bodied, dishonest, and idle fellows to work and live in the light of day, the theory of hereditary or acquired transmission in their case either falls to pieces or hangs by a slender thread. It would be no infringement of individual liberty if the police regularly visited such in their haunts and had them under surveillance.

Sir Robert Anderson,[1] late Chief of the Criminal Investigation Department, Scotland Yard, regarding crimes against property makes the following observations: While ordinary crimes against property are decreasing, crimes of this kind by the "professional" class are steadily on the increase and have become a serious public danger. This class, few in number when compared with the seven classes of criminals tabulated in judicial statistics, to use his words, "keeps the community in a state of siege." They are not particular whether in achieving their ends they maim or kill. Their watchword seems to be, "your money or your life." For them no extenuating circumstances are put forward. They are not constrained by necessity, and, unlike habituals driven to crime by hunger or by inherent or acquired weakness of moral character, they live in luxury. The protection of life and property can best be secured by the "indeterminate sentence" carried out in a penal settlement.

As a preventive of the robberies and housebreakings accompanied by personal violence it has been suggested by a section of the bench and of the public to extend the use of the lash on the principle that ruffians are to get as good as they give. For juvenile delinquents guilty of malicious mischief and pilfering the birch is properly prescribed in lieu of imprisonment. Its application to habitual drunkards has been seriously advocated. But we are two centuries beyond that. Whatever philosophic and well-meaning persons may think of the stimulating and salutary effect of the lash on the gray matter of the brain of the sot and of the neuropath, it is certain, beyond the shadow of a doubt, that no Parliament in this country will sanction such a corrective. And if that be so, it is nothing short of an outrage upon ethics and humanity to propose flogging for the chronic inebriate, upon whose body and mind years of over-indulgence have left indelible impressions, even if as yet, in this

[1] *Criminals and Crime.*

the era of pathological psychology, the specialist and the microscope have not in every case detected lesions of the nervous system indicative of structural and functional change. To suggest the lash for the inebriate requiring compulsory seclusion is to betray a superficial acquaintance with his psychology.[1]

The lash for major and grave crimes, and the birch for boys guilty of petty delinquencies, can be justified, but its application requires the greatest discrimination. Its immemorial use in the best schools of the country in no way justifies the contention of this type of penal therapeutist. It is assumed by the advocates of corporal punishment in civil and military prisons and in schools, that the pain inflicted, as well as the moral effect, is in all cases the same, this assumption being again illustrative of the much mistaken doctrine of this form of punishment, like time puishment, fitting the crime or delinquency, and not the author of either. There could be no greater mistake, and those who take this view cannot possibly understand the differing psychic states met with among adults as well as juveniles, some of whom will bear the flagellation without wincing and without much damage to the hide, while others suffer excruciating agony and considerable epidermic damage.

In all cases, before corporal punishment is inflicted, it would be well that the physician should be requisitioned to estimate the psychic condition generally, especially as revealed by fear, and by the reaction of the skin to the æsthesiometer and the other tests. In this way the sentence of corporal punishment, as expiatory in whole or in part of guilt, would be tempered with mercy, and the number and force of the strokes regulated. In some cases, regard being had to the probable effect, it would not be inflicted at all.

From what has already been written it must be apparent that the main line of treatment and prevention lies in two very different directions—*first*, an adjustment of the social position

[1] Similarly objectionable in the treatment of the recidivism of the obsessed and petty delinquent is the policy of "hustling" recommended by some, not without some knowledge of the problem. It is a proposal not for one moment to be entertained. Of "hustling" such have had more than enough. In their lives they have known naught else, and to add to it the official "hustling" possible under police and poor laws would be to betray a striking lack of knowledge of the make-up of the derelicts of society. For such it is rest and regular employment under hygienic and moral conditions and under supervision, rather than "hustling," that is wanted.

and condition more in accordance with every canon of justice and right for many who are to be found in the ranks of recidivism and for many qualifying for it; and *second*, for others a psychological and psycho-pathological investigation into each law breaker who has qualified and is qualifying in criminal or delinquent habits, in order to determine approximately how far the will, affected by mental warp or defect, is free, and then settle for them their mode of life and work, and the degree and kind of supervision and moral support called for. And there can be no possible hardship or infringement of personal liberty to authorise suitable persons to supervise those criminals and petty delinquents who, with or without the apparent excuse of mental or bodily defects, or without visible means of honest subsistence, live a parasitic, debauched life in slums and do no honest work, preferring to be idle and debauched, or to plunder as opportunity presents itself.

Juvenile delinquency, whether due to environment or to mental and physical degeneracy, or to both, is undoubtedly to a very great extent preventible; philanthropists have proved that. As a cause of adult recidivism, it is possible to tap much of it at its source. This kind of delinquency is said to be decreasing, and statistically that is certainly the case, and in reality to some extent it is true, but it should be made plain that much of that delinquency in evidence in criminal courts and in prisons a quarter of a century ago and later is now more fittingly lodged in reformatories, industrial schools, and training ships. The Children's Bill, just introduced into the House of Commons, linking together the whole scheme of reformatory and industrial schools, and taking a wider view of parental responsibility, is one of many steps in the right direction. It provides that no child under fourteen years of age shall be subject to imprisonment, and none under sixteen to penal servitude, and it deals with baby-farming and children living in disreputable homes.

The lines which prevention should take have been dealt with at some length in the course of the article. These may be briefly summarised as follows:

(*a*) For children of tender years, decent and healthy moral homes, under respectable parents, or guardians in the case of orphans and deserted and neglected children likely to go astray, would give them a chance.

(*b*) Removal from such homes or guardians, on proof of unfitness, by the supervising authority and boarding-out in respectable rural homes under proper safeguards; or to industrial schools, truant schools, etc.

(*c*) Special police courts for children. Birching preferable to brief imprisonment or fine.

(*d*) For children of an older growth, and for their years too well acquainted with criminal and delinquent ways, industrial and truant schools, training ships, and reformatories.

(*e*) A summary ending of slum dwellings, and of the land laws and the economic conditions creating and perpetuating them. Municipalities, like philanthropic agencies, to be empowered to provide and supervise cheap, healthy dwellings. Attention to the alcoholic problem in its relation to slum dwellings and crimes and offences.

(*f*) Education and training in industrial work is indispensable for all: likewise ethical and religious teaching. Much of the crime and delinquency of every land is due to a neglected, ill-regulated childhood, spent for the most part in the street, and in abodes of infamy and immorality, parental responsibility and example being a *minus* quantity.

(*g*) For those who have so far graduated in criminal and delinquent ways, and for those who may fairly be set down as recidivists, rational and humane treatment in prisons, inebriate reformatories, shelters, and labour colonies[1]; the fewer in aggregation in the last three institutions so much the better.

(*h*) Special homes and special treatment for the weak-minded and those with mental warp either in certified or State inebriate reformatories, in shelters and labour colonies.

(*i*) Suitable help and supervision, both of young and old, on discharge from all places of detention, by means of Probation Officers.[2] An "after-care" association would, in a general

[1] Glasgow was the first city to establish, mainly through the enlightened efforts of Treasurer D. M. Stevenson, a labour colony for forty inmates at Mid-Locharwood near Dumfries. The Social Work Committee of the Church of Scotland, of which the Master of Polwarth is Convener, has set in this matter an excellent example to churches and philanthropic bodies by establishing a small labour colony at Cornton Vale near Stirling, and shelters and labour bureaus in cities and towns.

[2] To the city of Glasgow is the credit due of first instituting in this country this class of person, Treasurer D. M. Stevenson and Bailie Bruce Murray being the first to recognise its prophylactic value.

sense, and the Probation of Offenders Act with the developments foreshadowed by Lord Advocate (Shaw) would, in a special sense, meet this.

(*j*) The provision of work for the unemployed, and shelters for those of them requiring it.[1]

For the unemployed as well as unemployables there are, as a rule, three portals open, *first*, the parasitic life of the slums, *second*, the life of the tramp, and *third*, a life of open crime and defiance of the law. It is not a necessity for the entrant to either category to be of the "unemployed." There are those who have no excuse of that kind who recruit the ranks of all three. Among the unemployed one finds roughly three classes, the genuine poor, who cannot get suitable work and who suffer more than any other class; vagrants and paupers, who have given up the struggle, or being constitutionally averse or incapable abandon themselves to a life of dependence and parasitism; and the criminal who has passed through the first class, avoids the second, and enters upon a life of deliberate warfare against property.

A memorandum, issued in March, 1908, by the Home Secretary, Mr. Gladstone, in regard to the probation officers to be appointed under the Probation of Offenders Act, 1907, for juvenile delinquents and adults of respectable antecedents, has been submitted to justices and magistrates. It sets forth that police officers employed are not to wear uniforms, that honorary volunteer officers will be available in many districts, that female probation officers should be appointed for boys and girls of school age, as well as for women and girls over sixteen, and rarely, if ever, police constables, and that the work found should be of a skilled kind and not casual.

Lord Advocate Shaw, speaking of the purposes of the Probation of Offenders Act, 1907,[2] said the object was "to seize

[1] Distress Committees have been formed in conformity with the Workmen's Unemployed Act of 1905. Supported by allocations from the Queen's fund, by government grants-and voluntary subscriptions, labour exchanges for the registration of the unemployed, "help" factories, and farm colonies have been provided and have been a success in a way charitable agencies have never been, and the fair wage earned is not looked upon as a charity dole.

[2] The Probation of Offenders Act repeals the Probation of First Offenders Act of 1887, and section 12 of the Youthful Offenders Act of 1901, and provides where an offence is charged before a Court of Summary Jurisdiction, and the court thinks the charge is proved, it may dismiss the charge or bind the offender

all possible cases of the beginning of a career of crime, lift them out of the hard and fast category where the punishment and the punishment alone was made, as it were, to fit the crime, and hand them over to some authority which would impose some new test in the situation, and which would give a humane touch of helpfulness and foresight, and which might retrieve the man in danger of being a criminal from a life of crime."

There is a kind of recidivism unfortunately too common that is, so far as one can judge, without excuse, and that is the recidivism of "professional" criminals whose environment has been correct, who have received a fair or good education, and who have been trained to habits of honest industry as labourers or skilled workmen, but have deliberately abandoned these and embarked on the sea of fortune and reckless adventure. Some of these, it is to be feared, society will always have in its midst to control by present or improved reformatory and penal methods.

Herbert Spencer, in his *Prison Ethics*, referring to the person whose recidivism is deliberate, ventured the paradox "that mankind go right only when they have tried all possible ways of going wrong." The paradox falls short of the truth, and he adds, "Instances have shown me that when mankind have at length stumbled into the right course they often deliberately return to the wrong." This is true of professional recidivism.

It has been stated and proved by Quarrier (Glasgow), Barnardo (London), and other philanthropists, that if 1,000 slum children were removed to healthy, moral, and physical environments they would, as a rule, turn out well and become law-abiding and productive members of the community, the physical and mental degenerates among them receiving special care; and conversely it is held with reason that if 1,000 children

over with or without sureties to appear for conviction and sentence when called on at any time within three years if it is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict punishment, or any other than a nominal punishment, or that it is expedient to release the offender on probation. Probationary officers may be remunerated by town and county councils when their services are not voluntarily given. The probation system is an attempt to reform a prisoner outside prison, a carefully-selected and discreet officer finding work and supervising, in a friendly way, the prisoner in his own home or in the home of a guardian.

at a plastic age from the better classes were placed in slums, and amid environments of a noxious kind they, whether normal or degenerate, would, as a rule, become as the slum children.

Sir John McDonell, Master of the Supreme Court, in his introduction to the *Judicial Statistics* (Part II) of last year, makes some valuable suggestions of a sociological order. He indicates that while crimes against property are no doubt affected by the conditions of employment and wages, the large class of non-indictable offences are connected with the consumption of alcohol, and the consumption of alcohol follows the movements of trade, increasing when it is prosperous and declining when it is bad, the reverse being true of indictable and non-indictable offences against property.

He warns the public that the theory of a close connection between crimes and drunkenness must be viewed with caution.

Pathetic, indeed, are his observations on the prison population: "The prisons are peopled by the very poor, the very ignorant, and the unskilled."

CHAPTER X.

Jurisprudence and Penology.

The attitude of the criminal laws and of judges towards recidivism and the treatment of the recidivist by police and prison authorities are as uncertain, unscientific, and as varied in the same and in different countries as the types of habituals themselves. The personal equation of the judge counts for much. Sentences, too, often assume a cast-iron type and appear, as a rule, to fit the crime, and in no sense, or very slightly, the criminal, about whom judges as a rule know next to nothing as to bodily and mental condition, temptations, antecedents, customs, and environment, etc. The trained legal mind would be greatly enriched by the study of sociology.

Lord Guthrie, one of the senators of the College of Justice, Edinburgh,[1] in making an appeal for the introduction of the "indeterminate" sentence, showed the absurdity of the present system of judicial punishment by citing the case of the man

[1] Address to Scots Law Society, November, 1907.

who would be reformed long before his sentence expired, whilst another unreformed, and undeterred, was allowed to go free to resume his old career. He further said he believed much in environment and little in heredity, and that if the stream of crime was to be dried up the country must be prepared to deal drastically with the causes, one being intoxicants, and to remove the children from the influences of criminals and drunkards. These views will find ready acceptance.

Colonel McHardy has said that "there is no crime at all to speak of in Scotland; it is all a question of whisky. The day may come when all but a few of our prisons may become inebriate homes." A good many observers will not go this length or anything near it, believing that to the worst criminals who attack property and the person for gain this dictum does not apply. It is true, no doubt, of the great army of petty offenders, such as drunkards and prostitutes, and of major crimes against the person, such as homicides, bad assaults, and cruelty to children.

The idea tacitly acquiesced in by the public that criminal courts in residence and on circuit must have pabulum—sensational or sorbid—regularly provided for them will, it is hoped, by-and-bye be no more a reality than that the high officers of State in Japan, as grotesquely represented in the "Mikado," must provide for the ruler of that country, the victim for a public execution when he made state entry into a town.

The laws ordain imprisonment, penal servitude, and transportation as the penalties for recidivism. Transportation with its long track of failure and cruelty is now only carried on by Russia, France, and Portugal. It is a confession at once of impotence and fear. Great Britain abandoned it forty years ago. It is known to have made recidivists more inhuman, more hardened, and more determined than ever. There is nothing to be said in its favour. Public safety for life and property is assumed because thousands of miles of land and sea intervene between convicts and the Fatherland, and because they are worn down by unhealthy climates, rigorous discipline and scarcely refined cruelty, all the more reprehensible that it is hid from the view of the nations still adhering to this barbarous plan of punishment. Reformation and regeneration are not dreamt of.

It is a moot ethical question, what is the first duty of society

to recidivists, whether blameworthy in whole or in part, or, as in some cases, not at all.

It is acknowledged that society can and must protect itself against the law breaker, but it is not creating a fine distinction to say that there is a great difference between society *protecting* itself and society *punishing* the criminal, in the more or less irrational way it does by means of that unworthy *motive*, the fear of penalties, many of which cannot be defended. It has been shown that of every 100 who go to prison for the first time 30 come back, but of every 100 who have been five times, 79 return! Terrorising rather than reclamation, whatever may be aimed at, is the result, and there can be no doubt that the more punishment in certain harsh directions is practised the more is the human element in criminals starved, and in proportion as individuality is ruthlessly suppressed in the routine life of months and years of all but absolute silence, and monotonous labour of anything but an inspiring kind—the recidivist becomes a well-disciplined and, as a rule, well-behaved human automaton. *Apropos* of this, Michael Davitt, a political Irish prisoner and a *litterateur*, with much truth and force remarks, "The human will must be left outside the prison gate where it is to be picked up again five years afterwards and refitted to the mental condition which penal servitude has created in the animalised machine which is discharged from custody. . . . Working on such lines, on the lines of greatest resistance, it is no wonder that penal servitude is a fruitful nursery of recidivism and a patent instance of expensive failure." Preferable would be the compulsion to lead that orderly, industrious, and as nearly normal life as is possible in a prison. That is more dreaded by the average criminal than any treadmill, air-grinding crank, or degrading uninteresting and non-educative labour.

The Lord Advocate for Scotland (Shaw) said of him, "In a parliamentary assembly I should command the assent of all shades of opinion to this, that no greater prison reformer has ever impressed his views more consciously and more vividly than Michael Davitt." Everyone who has had the privilege of discussing prison reform with Davitt will appreciate the eulogium.

Society always may be counted upon to assert its obvious right, and undeniable might, to punish its noxious and offending members. But this should not be all. There is its obvious

duty and true interest to transform as many law breakers as possible into useful and law-abiding citizens. It is recognised in this country and on the Continent, that the industrial tendency of social evolution points conclusively to the transformation of prisons into industrial centres. The Departmental Commission[1] of 1894 (England) recommended "the practice of association for industrial work," and it is being gradually introduced among women prisoners and juveniles. The right of society to protect itself is admitted by all, to punish by a majority. But what is punishment? The daily task is not viewed as a punishment. The writer holds that although *punishment* should begin and end with loss of liberty, of friends, of indulgences, and of amusements for long periods, severe enough if one contemplates what it all means, it should *not* involve an all but abnormal life for months or years inside a cell of four brick walls unrelieved by anything to suggest the normal life outside, such as a mirror, a bookshelf, an engraving or oleograph, a photograph of family or friends, a cell from which, owing to the height and size of the barred window, with its opaque or fluted glass, the solar rays, and the orb and the eyes of the night cannot be seen; a cell in which the faculty of speech is repressed except for a few minutes daily. It is bad physically and mentally for those who spend twenty-two out of every twenty-four hours in this way. This system is not so bad, no doubt, as that which preceded it, *viz.*, promiscuous association of prisoners day and night with all its iniquities and contaminations, but the cellular and separate prison system in its refined and subtle ways presents objectionable features as all systems must inevitably do in proportion as they depart from the ordinary modes of living of free citizens. The evils of promiscuous association are glaringly exemplified in the prisons of Spain, Portugal, and in some of the prisons of France, and of the United States. Cellular separation is met with in British, Belgian, and in some of the French and American prisons. It is inevitable there must be some differences between the living of the free and the bond.

[1] *Personnel:* The Right Hon. H. Gladstone, M.P., Chairman, The Right Hon. Sir Algernon West, K.C.B., The Right Hon. R. B. Haldane, K.C., M.P., Sir John Dorington, Bart., M.P., John Henry Bridges, M.B., F.R.C.P., Arthur O'Connor, Esq., M.P., Albert de Rutzen, Metropolitan Police Court Magistrate, Miss Eliza Orme.

It is not to be thought that a reversion to association after careful classification except at work is advocated. The writer is convinced that in prisons and likewise in barracks [1] every individual should have the privacy of a separate sleeping apartment unless the physician on medical grounds orders otherwise. The cell or room should be made as homely as possible in the manner indicated if the human element in their hearts is to be conserved and reformation accomplished. No artificial method, no matter how long practised and believed in in spite of failure, will avail. By all means let the separate sleeping-room be retained, but convert prisons into industrial institutions, houses of detention, or reformatories. In Elmira and Concord (United States), the principle has been recognised that up to a certain age almost any criminal is salvable, and is to be regarded as *potentially* having the making of a good citizen. The writer, who is no optimist, and has seen in all its reality something of the seamy side of society, is of opinion that many of the adult criminals and delinquents under a rational penal system and under better social conditions may be regarded in the same light. It has been asserted that after three or four convictions an offender is almost sure to return again to prison and become a recidivist. This may be true of criminals undergoing long sentences, but it is not true of thousands of persons committing petty offences who fulfil this definition. So far, then, it will be conceded that recidivism is the outcome of irrational and unnatural penal systems, but to what extent it would be difficult to say. Healthy industrial life should be made the basis of a reformatory system. Japan, the gateway of the day, has reached something like the zenith of industrial life and work in prisons. According to capacity work is arranged, and some make *cloisonné*, others carve, do carpentering and casting, grind rice, and break stones.

And what could be more humanising than that a prisoner should be employed at educative and remunerative labour, labour that would tend both to form and reform character, out of the earnings of which he might be permitted to send a small contribution to his family circle from time to time? Of course this implies a different kind of work from that at present in

[1] In barracks this will be possible when the soldier for years in garrison towns is quartered in his own home or in lodgings beyond the gates and is summoned to duty in the same way as any other worker.

vogue, work unhampered by Trade Unions, which, owing to the paucity of prisoners compared to the general population, have in reality nothing to fear. It would be true economy to the nation in the long run.

In a communication,[1] cleverly critical of the defects of some of the methods in operation in Scotland, some pertinent observations are made. But, it may be observed, destructive criticism, although valuable, does not carry us far.

Summary of penal reform.—(1) The conversion of prisons into industrial reformatories with associated labour and conditions favourable to physical and mental health. This, of necessity, implies an end of the solitary system during working hours; special housing and treatment of the feeble-minded, as is now the case at Aylesbury Prison for females.

(2) Cultivation and afforestation of land in connection with reformatories and labour colonies.

(3) The adoption of the "indeterminate" sentence and of the probation system as practised in connection with Borstal juvenile-adult prison (England) and in the United States.

(4) The appointment of a specially qualified medical man to plan and supervise the anthropometric, physical, psychical, and psycho-pathological investigation into the case of each prisoner qualifying for recidivism, and of a competent observer of the great environmental factor in all its bearings. Such an official as the first has been recommended by three Government Commissions for Ireland, England, and Scotland.[2]

(5) The appointment of male and female officers with experience of the insane and in possession of the certificate of the Medico-Psychological Association.

(6) More fining and smaller fines for petty offences, and more frequent admonitions. This would tend to make the police the friend of the petty offender, and instead of dragging every drunk and disorderly person to a police cell, his place of residence might be ascertained, to which he could, before or after attaining sobriety, be taken in a cab or on an ambulance

[1] Dr. Devon, "The Study of the Criminal," Royal Philosophical Society, Glasgow.

[2] Royal Commission on Irish Prisons: Sir Richard A. Cross, *Chairman.* Departmental Commission on English Prisons: The Right Hon. H. Gladstone, M.P., *Chairman.* Departmental Committee on Scottish Prisons: Lord Elgin, *Chairman.*

litter, the cost being met at the time or afterwards, time being allowed to the offender or his friends for payment.

(7) It has been suggested by Colonel McHardy that the education of prisoners should be undertaken by School Board teachers, with the consent of the Education Department and School Boards, and the work directed and supervised by inspectors of schools.

In the rope of rescue suggested by these seven strands there is no weak spot.

In regard to the new buildings which might be required, a word of caution may not be out of place in this country any more than it is in the United States, where architectural *gloire* has been much in evidence in regard to prisons and asylums. Speaking of gaols, H. Hill[1] hopes "that the fashion which led to the erection of gaols in fine architecture will soon pass away, and that we shall rid ourselves of that strange kind of vanity which causes us to make a parade of moral deformity"; and Dr. Bleyer adds, "this applies equally to our magnificent lunatic asylums. Should we make a parade of mental deformity?"

The Departmental Commission of 1894 for England, already quoted, while giving credit for all that has been done since the passing of the Prisons Act of 1877, by administrators of prisons in the matter of hygiene, health, discipline, orderliness, economy, and high organisation, remark, "The moral conditions in which a large number of the prisoners leave the prisons, and the serious number of re-committals have led us to think that there is ample cause for a searching inquiry into the main features of prison life."[2] The "solitary" system has been proved devoid of any touch of humanity, of few, if any, of those influences which might soften the hard or heal the broken heart, nothing but silence, monotony, despair, and a starvation of the mental faculties resulting.

For long it was maintained in Great Britain that *nine* months was the longest period of solitary confinement which could be well endured without injury to mind and body. It is now reduced to *six*. But it is still too long. And it is no excuse that this severe strain is greater in France and Belgium, where

[1] H. Hill on "Crime," and Dr. Bleyer, "Treatment of Social Offenders," in the *Medico-Legal Journal of New York*.

[2] In 1895 Sir E. Ruggles Brise, an enlightened penologist, was appointed *Chairman* of the English Prison Commission.

it runs up to years, and is defended by its advocates, medical and administrative. In the view of the writer it is indefensible. Criminals are not monks under vows of silence and seclusion, nor recluses, although in time some of them may approximate the latter in eccentricity and deviation from the normal.

It is not in the nature of a counsel of perfection to hold that it is only through the gates of labour that the vagrant and idler can pass into the possession of the rights of citizenship, and thus the value of workshops and technical education in places of detention becomes apparent.

It is the case that some of the American prisons visited by the writer in 1893 as well as other public institutions are not only self supporting, but yield a profit (Baltimore). These are those in the Eastern States in which the labour of convicts is hired out to contractors, who send their plant and instructors into prisons where work is carried on to the full on the associated plan. This system is fruitful of contamination and in the long run is not economical. In the Southern States the convicts are leased out in gangs and placed in camps of contamination, the safety of the prisoner being secured by rifles, cowhides and *chevaux de frise*. There are no high walls, and no bolts and bars. The system is one neither to be approved nor copied.

CHAPTER XI.

Juridical and Penal Reform.

In the preceding chapters the nature of these have so been indicated that a summary will suffice now. Both for habitual criminals and habitual offenders, legislative action of a kind that will have an intelligent regard as to what is implied by punishment, deterrence, and reformation is called for. Punishment implying involuntary detention and seclusion, and reformation applies to all habituals, deterrence only to some. For instance, there can be no doubt that punishment, in some cases, just as the presence of a policeman is in all cases a deterrent to the convicted housebreaker, garotter and thief, and to others of the same *genus* contemplating these crimes, while to the drunkard neither punishment nor the policeman counts for anything. When he begins his bout these two factors do not enter into his conceptions, and when he has finished his

mental vision is so obscured that he cares nothing for either. This striking distinction should not be lost sight of by those who administer the criminal law and lay great stress on punishment and deterrence.

Following a series of daring burglaries in Glasgow, and the presence in the city of a number of dangerous felons, the Lord Provost (Bilsland), speaking at the Discharged Prisoners' Aid Society, remarked very truly that once prisoners had shown ingenuity in crime they should be detained indeterminately for the purpose of reformation, and on no account should liberty be restored until there was clear evidence of an intention to live an honest life.

It is evident from the recent trend of opinion coming from the fountain-head of justice—the Home Office—and from some judges and magistrates, and from prison administrators alive to the true line of policy to be pursued in the light of past failures of our criminal laws and penal system, that fresh legislation may be expected to fit especially the criminal and offender, however much it may fit the crime or offence, legislation which for the future will take proper cognisance of the physical and mental condition of accused, of their heredity, of their environment with its conditions and temptations fatal to education, morality, and a decent upbringing. The "indeterminate" sentence for habitual criminals other than the "professional,"[1] for habitual petty offenders of the inebriate and vagrant type, could not but form a main plank in any enactment to bring about better and more economical results.

Likewise, legislative sanction would be required to convert most of our present penal institutions into selective *depôts* and industrial centres, and to set up labour colonies or settlements so as to admit of a classification not hitherto attempted, a classification based upon such important considerations as age, the usual type of crime or offence, moral character, mental capacity, capacity for work, and the nature of the work. The inculcation of industrious habits might be expected after a time to instil a healthy desire to work rather than to steal, drink, or beg. It would be impossible to overrate the benefits of extended classification gone into carefully on these lines, and

[1] Some penologists would give the "professional" also the benefit of the "indeterminate" sentence; others the "cumulative" as more appropriate. It is assumed the judge will have some discretion as to which sentence he will inflict.

when this has been done many beneficial changes within the walls, cells, and workrooms would follow.

Such changes point *first* to association under safeguards in the schoolroom, at work in the shops, in the field, in quarries, etc., but not in the sleeping apartment. There would, in addition to the brief and occasional conversations now possible between prisoner and chaplain, schoolmaster, and warder, be reasonable opportunity afforded for the exercise of the faculty of speech in legitimate ways, and for varying periods of time daily, for all persons undergoing detention for a month or upwards (the present system is no hardship for sentences under a month); *second*, the work would be of a kind that would interest, elevate, and be helpful on discharge (this could not be said of oakum-picking, more fitted for machinery than human fingers and brains); *third*, the construction of the sleeping apartment with a view to adequate light for work and reading by day or night, and with furnishings, such as a bookshelf, bit of floor-matting, a mirror, oleograph, photographs of relations, which would sensibly relieve the monotony of four bare brick walls. The concession of these things, small yet significant, can in no sense be said to pamper *les detenus*. The absence of them in the past has been explained as part of the punishment, which it would be difficult to justify on a rational and intelligent conception of what is meant by punishment, which in its main features has always been, and must continue to be, deprivation of liberty and compulsory labour. Rightly understood, this is severe enough. Anything beyond this of a repressive and unnatural kind is calculated to do hurt rather than good.

In 1894, during an interview with Sir Algernon West, K.C.B., at one time a Director of English Convict Prisons and a Member of the English Prisons Departmental Committee, 1894, and who was also a visitant of American prisons, he was strongly impressed with the significance and humanising effect of the small but significant and humanising things, such as a small mirror, book-shelf, photographs, etc., and was anxious to see them introduced into the prisons of this country. Changes of the smallest kind come slowly, and only now or lately have some of them been introduced into our penal system.

The Report of the Scottish Departmental Committee[1]

[1] Sir Charles Cameron, Bart., M.P., *Chairman*; Lieut.-Col. A. B. McHardy, C.B., R.E., Chairman of Prison Commission; The Right Hon. R. Farquharson, M.D.,

appointed in 1894, by the Secretary for Scotland, Sir George O. Trevelyan, Bart., to investigate some aspects of recividism, contains some valuable recommendations in regard to habitual offenders, habitual drunkards, and vagrants, some of which remain unfulfilled. The Secretary for Scotland's remit did not cover either professional or habitual criminals. As to *habitual offenders*, it declares *inter alia*: (1) That penalties much smaller than the maximum of those competent under existing laws are sufficient in the great majority of cases to deter. (2) That petty offenders should be released at any period of detention by part payment of the fine imposed, proportionate to part of sentence still to be undergone.[1] (3) The establishment of reformatory institutions to which habitual offenders might be sent on their discharge from prison. (4) A register of habituals on which the names would remain for thirty months, with the proviso that if at any time during this period he offended he would be sent to the sheriff, who, in addition to a sentence of imprisonment, would order detention in an adult reformatory from twelve to thirty months. (5) Labour settlements or reformatories in which out-door work and skilled and unskilled labour could be carried on for women habituals, who are in the vast majority, in addition to laundry work, sewing, knitting and weaving, etc. (6) Inmates to be liberated conditionally or unconditionally, or licensed out to approved institutions or persons. (7) Weakminded or disabled habituals to be detained in a poorhouse for periods and on conditions similar to labour settlements for which they are unfitted. (8) The sheriff to have power, instead of sentencing, to release on bonds or recognisances with or without sureties being entered into. (9) The utilisation of prisons and poorhouses for labour settlements.

Vagrants and beggars,[2] of whom, exclusive of tinkers, there are censussed by the police twice a year about 10,000. Putting in force the Public Health Act, the Prevention of Crimes Act, 1871, Prevention of Trespass Act, 1865, the application of the Vagrancy Clause of the Burgh Police Act and Special

M.P.; Sir Colin Scott Moncrieff, Under-Secretary for Scotland; Sheriff Dore Wilson, Aberdeen; Dr. J. F. Sutherland, Deputy Commissioner in Lunacy for Scotland; Miss Flora C. Stephenson, Chairman of the Edinburgh School Board.

[1] This has been given effect to by legislation.

[2] Fletcher, of Saltoun, a hundred years ago, put them at 100,000 for Scotland.

Police Acts, to counties, with restricted penalties and power to send the children to Industrial Schools, was recommended.

Habitual inebriates.—Two kinds (*a*) those who find their way into the hands of the police, and (*b*) those who don't. For (*a*) adult reformatories, poor-houses and labour settlements—this, in part, has been given effect to by legislation ; for (*b*) compulsory as well as voluntary seclusion in inebriate retreats for those defined in the Inebriates Act of 1879. Nothing has been done for the latter.[1] It may be assumed with certainty that the element of compulsion would lead to more frequent voluntary application. To establish retreats for those who cannot provide all the funds necessary for maintenance it was recommended that in addition to voluntary contributions, town councils, county councils and parish councils should be empowered to contribute towards the support of licensed retreats, and likewise that it should be made an offence for a license holder knowingly to supply drink to inmates of retreats or persons under sentence of commitment to an adult reformatory, labour settlement, or poor-house. The Inebriates Act of 1898 gives these bodies authority to contribute. One town council, that of Glasgow, and one county council in Scotland, that of Lanarkshire, have set up certified inebriate reformatories under the Inebriates Act of 1898, and receive grants-in-aid from the Treasury.

It has to be admitted that dipsomaniacs—a large class—if they don't breed true to themselves breed something akin, *viz.*, a neurotic offspring which may eventuate in one of the many neuroses, in actual insanity, or in the true " drink crave," which, in spite of the views of sceptical writers, is as real as the drink itself or other manias.

The " liberty of the subject," one of those apparently simple axioms which transcend ordinary intelligence, is at once trumpeted whenever it is proposed to deal fairly and righteously with habitual inebriates. It would be more correct to speak of the unbridled license of the subject. Of two antithetical truths, the rights of the individual and the rights of society, some people have no difficulty in appreciating the one, but find it all but impossible to grasp the other. It is evident the rights

[1] Lord Herschell's Inebriates Bill of 1895 was rejected by the House of Lords on the second reading because it made no provision for a jury and the right of appeal.

of the individual must be subordinated to the rights of society. That is the object of government. But some of our laws present striking incongruities, and none more difficult to justify than the refusal to accept intoxication as an excuse for crime, and the treatment of repeated intoxication as beyond the jurisdiction of the law, although, with many, the sure road to crime and delinquency.

Any statement on penology, however brief, would be incomplete without an acknowledgment of the work of the Howard Society throughout a long series of years, and especially of the advocacy of its late secretary, Mr. William Tallack, and its present, Mr. Holmes, on behalf of prison reform, and such an acknowledgment is also due to the Bureau of Education, Washington, U.S., with so accomplished a penologist at its head as Mr. Arthur Macdonald.

Likewise acknowledgment has to be made of the memoirs lately issuing from the Eugenics Laboratory, London, in which "in the mass of family histories accumulating there appears to the observer a certain correlation in heredity."

Conclusion.

Both prophylaxis and treatment in the past has everywhere, more in some countries than others, been a dismal failure, recidivism and the cost of checking it going up by leaps and bounds. The bill of costs for Great Britain and Ireland in one year to maintain the judiciaries, the prisons and the police reaches something like £10,000,000. No notice is taken in this of what it costs the Poor Law. And no doubt it is on the same lavish scale in the United States, and in Continental States. In any country with free institutions, with enlightened statesmen, law givers, penologists, political economists and social reformers, surely a better way might be found by an abandonment of the juridical and penal methods of the past, and the adoption of the more humane, rational, and intelligent methods, adumbrated, it is to be feared imperfectly, in the communication now submitted for criticism and consideration.

It would be folly, if not something worse, and would assuredly lead to disappointment to hold out the alluring prospect presented by different and more rational methods of preventing and treating criminality and delinquency sketched

here, and elsewhere, of a considerable and immediate reduction of cost to localities and to the national exchequer. In time, no doubt, it would come, the time when many prisons would be dismantled, and the army of officials greatly reduced; but if farm and labour colonies were established and, where possible, existing prisons converted into the latter or utilised as observation and sifting depôts, it need not be a difficult task to ascertain the relative cost of maintenance of Society's derelicts under the old and new conditions. The fact that detention and treatment would be for long periods should do something in the way of reducing a standing army of police, numbering nearly 61,400 picked men,[1] in bringing about a reduction of the judiciary and paid magistracy of the country, and of the *entourage* of criminal and police courts. Instead of half a million apprehensions and citations in a year for petty thefts, drunkenness and disorder, prostitution and vagrancy, those for England being 386,000, and for Scotland 115,000, one would expect at least a reduction to one half, if not more, in the near future. The felon would not appear once in the dock for every six times he does now, and the petty offender not once for every dozen times. Better results would follow and many offenders would cease to appear. A good many of both types, the noxious and the nuisance, might be expected to return to society fitted for citizenship with or without the need of helpful patronage; but a large number already in *esse*, and a large number in *posse*, as might be gathered from the trend of opinion in regard to the constant productions of physical and mental "variations" of a degenerate type as things are, may, unless something is done for them, be considered unsalvable, and requiring detention and supervision of varying degrees. This term is preferable to "incorrigible," regard being had to the small share of responsibility which attaches to many recidivists themselves. For the rest of the responsibility, heredity and social conditions (society) must accept and apportion their respective measure of blame.

Amid the prevailing gloom which perusal of these pages predicates, glimmerings of light are breaking through, not least those issuing from the latest returns for England and Wales. In fifty years the population increased from 19,250,000 to 34,500,000, or 79 *per cent.*, and proportionately to population thefts had

[1] 61,400 strong: England 46,000, Scotland 5,670, and Ireland 9,730. Total cost falls little short of £6,000,000.

diminished to the extent of 40 *per cent.* The total number of indictable offences in 1906 was 59,079, and the annual average for the quinquenniad 1902–1906, 59,200. Crimes of violence have fallen in this period from 1,737 to 1,443. The figures for robbery show a gradual decrease; those for arson have been stationary.

As might be expected, crimes of burglary and housebreaking have increased. The same is true of sexual crimes, the numbers having risen from 421 to 1,103, or 180 *per cent.* Much of this is due, not to a greater prevalence of these crimes, but to the creation of new crimes, and a stricter enforcement of the law. Prosecutions for attempted suicide have steadily and continuously increased, a fact not of happy omen, so far as the mental well-being and stability of the nation is concerned.

The decrease of crimes generally, and especially those, such as larcenies, which are four-fifths of the whole, with acquisitiveness as the motive power, in 1906, coincides with, and may, to a large extent, be attributed to increased national prosperity and increased wages. Roughly speaking, crimes against the person and crimes against property are affected in different directions by economic conditions, those of theft diminishing, those of violence and drunkenness increasing with prosperity, and, on the other hand, when times are dull and trade bad the opposite is the case.

Sentences to satisfy public opinion would, as a rule, for first or second offences, require to be brief if justice is to be tempered with mercy, but for repeated offences, when it is found that the environment is wrong and that there is evidence of mental warp or mental defect, then other places than prisons are required, such as Lord Guthrie, in the address referred to, mentioned, *viz.*, reformatory establishments for the "reclaimable," and places of permanent detention for the "irreclaimable." In this connection I do not include that large number of industrious workers who are foolish occasionally and may be several times in the hands of the police. Careful discrimination is required, if these latter are not to be swept into the net of legislative penal reform.

∴ The Home Secretary (Mr. Gladstone), on May 27th, 1908, introduced into the House of Commons a Prevention of Crime Bill, which proposes to make the Borstal reformatory system for youthful offenders permanent and national, and to apply the "indeterminate" sentence to "professional" criminals. Both proposals are fraught with good to criminals themselves and to communities.

APPENDIX.

Since these pages passed through the press the writer has seen an osier or willow plot under cultivation. The experimenter is Mr. Robert Sinclair, Harris, who has a thorough knowledge of forestry. In sheltered situations, in suitable soil (deep peat, loam, and boulder clay), and with a moist climate, Mr. Sinclair believes the return will be £30 an acre, each acre yielding eleven tons of willows of the "Merrian" variety. Even half of this return would be welcomed by cultivators. Regard being had for the demand for willows for wicker-work, etc., osier holts or osieries might well and profitably be cultivated by small landholders, under any scheme of afforestation or cultivation, and there is no reason why, in the labour colonies contemplated for "unemployables," and on farms for the "unemployed," osier cultivation should not be resorted to as a profitable investment. The Congested Districts Board for Scotland are cultivating osier beds in suitable crofting districts in Skye.

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